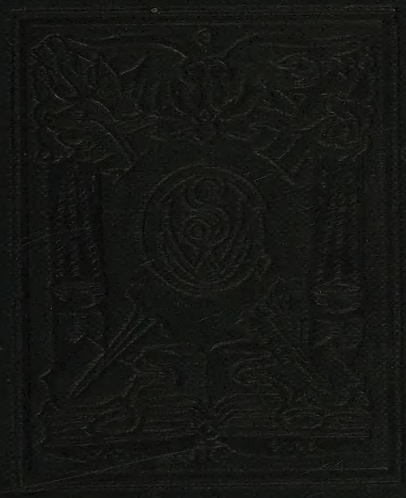

THE SCOTTISH BANKRUPTCY MANUAL.

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THE SCOTTISH BANKRUPTCY MANUAL

A HANDY DIGEST

CHRONOLOGICALLY ARRANGED, WITH FULL NOTES ON THE *CASE LAW*

THE TEXT OF

THE BANKRUPTCY (SCOTLAND) ACT, 1913

AND OTHER BANKRUPTCY STATUTES IN FORCE

ALSO THE

NOTES BY THE ACCOUNTANT OF COURT

FOR THE GUIDANCE OF TRUSTEES AND COMMISSIONERS

AND

SPECIMEN FORMS AND PRECEDENTS

BY

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LECTURER ON HIGHER ACCOUNTANCY UNDER THE INSTITUTE OF ACCOUNTANTS AND ACTUARIES IN GLASGOW AND THE GLASGOW AND WEST OF SCOTLAND COMMERCIAL COLLEGE

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PREFACE TO FOURTH EDITION.

It is gratifying to find that the *Manual*, while maintaining its position as a students' handbook, is in considerable demand among accountants and solicitors as an office companion. To render it more effective in both functions there has been added a series of Forms and Precedents. Cordial acknowledgment is made of the kindness of the publishers, Messrs. W. Green & Son, Limited, in allowing the author to use a selection of forms from their well-known work, *The Scots Style Book*.

The most recent bankruptcy cases have been added, and all references brought up to date.

The author is under obligation to Mr. J. Tullis Cochran, Solicitor, Glasgow, for his continued interest and for many suggestions made.

J. B. W.

194 West Regent Street,
Glasgow, *November* 1921.

PREFACE TO THIRD EDITION.

The Bankruptcy (Scotland) Act, 1913, while mainly a consolidation of previous statutes, contains many new provisions and introduces a new process called "Summary Sequestration" in lieu of the process of "Cessio" now abolished.

To meet the need thence arising for a concise handbook for every-day office use, this little work is issued. It is based on the bankruptcy section of the author's *Accountants' Digest*, and is set forth in the same style—a style which has proved popular.

The subject is treated in a concise yet comprehensive manner, under bold headings. Comparative outlines are given of the law of Insolvency and Notour Bankruptcy in relation to Gratuitous Alienations, Fraudulent Preferences, and Diligence, and a reference is given to the leading cases on the special points arising. The course of procedure under sequestration or an extra-judicial settlement is set forth in chronological sequence, and an exhaustive summary of the law as to ranking of creditors and the extent of the trustee's title is given.

The case law on bankruptcy has been ransacked and the gist thereof embodied in footnotes so as not to interfere with the main character of the book as a Digest.

The full text of the codifying statute, with the new provisions shown in italics, is appended, as also the old statutes of 1621 and 1696, which have not been repealed, and the newly issued Notes by the Accountant of Court for the Guidance of Trustees and Commissioners.

Special pains have been taken to provide a full index, and the author trusts that in this respect the book will not be found lacking.

He desires cordially to acknowledge the many valuable suggestions received from Mr. J. Tullis Cochran, Solicitor, Glasgow, and also his indebtedness to Mr. J. C. Burleigh, C.A., for a comparative chart relating to the reduction of Gratuitous Alienations and Fraudulent Preferences, which has formed the basis of the chart published in this book.

Notification of any discrepancies which may have crept in will be esteemed a favour.

J. B. W.

125 West Regent Street,
Glasgow, *February* 1914.

TABLE OF CONTENTS.

PAGE

TABLE OF CASES xiii

EXPLANATION OF ABBREVIATIONS 1

INSOLVENCY AND NOTOUR BANKRUPTCY—

Insolvency 5
Notour Bankruptcy 6
Reduction of Gratuitous Alienations 8
Reduction of Fraudulent Preferences 9
Equalisation of Diligence 10

SEQUESTRATION—

Petition 12
Citation Warrant 14
Objections to Petition 15
Interim Preservation of Estate 16
Abbreviate for Register of Inhibitions 16
Award of Sequestration 16
Transmission of Process to Sheriff-Clerk 17
Gazette Notice 17
First Statutory Meeting 17
Trustee's Confirmation 20
Completion of Trustee's Title 21
Warrant to Receive and Open Letters Addressed to Bankrupt . 22
Inventory and Valuation 23
Examination of Bankrupt and Others 23
Allowance to Bankrupt(s) 27
Deceased Debtor's Estate 28
Second Statutory Meeting 29
Meetings—General Provisions 30
Voting Rules 31
Oath 31
Majorities 32
Special Deductions 32
Purchase of Creditors' Securities, etc., by Trustee . . . 36
Sale of Heritable Estate 36
Lodgment of Claims for Dividend 38
Time Limit 38

SEQUESTRATION—*continued.*

PAGE

Documents 39
Deductions 40
Objections to Claims 40
Prescriptions 41
Valuation of Contingent Claims and Annuities 42
Purchase of Creditors' Securities by Trustee 42
Adjudication on Claims 43
Order of Ranking 44
First Dividend 46
Accounts 46
Commissioners' Meeting 46
Notices 47
Appeals 48
Scheme of Division 49
Payment of Dividend 49
Subsequent Dividends 49
Acceleration of Dividends 49
Postponement of Dividend 49
Alteration of Periods 50
Annual Return to Sheriff 50
Sale of Outstanding Estate 50
Contents of Sederunt Book 51
Discharge of Bankrupt 52
Discharge of Trustee 55
Removal of Trustee 56
Removal of Commissioners 57
Recall of Sequestration 58
Deed of Arrangement 60
Composition Contract 62
Extent of Title of Trustee on Sequestration 67
1. Goods Purchased but Undelivered 67
2. Goods Received after Insolvency 68
3. Goods Sold by Bankrupt after Sequestration . . 68
4. Debts Uplifted by Bankrupt after Sequestration . . 69
5. Bills of Exchange, etc., Uplifted after Sequestration 69
6. Acquirenda 69
7. Alimentary Funds 70
8. *Spes Successionis*, and Contingent Rights . . . 70
9. Uncompleted Contracts 71
10. Copyrights 72
11. Trust Funds 72
12. Property of Bankrupt's Wife 72
13. Property Alienated under Dispositions Challengeable 74
14. Property under Ineffectual Diligence 75

SEQUESTRATION—*continued.*

Creditors' Preferences—

PAGE

1. Securities which Prevail over Trustee's Title . . . 75
   (*a*) Voluntary Securities Unchallengeable . . . 76
   (*b*) Tacit Hypothecs 76
   (*c*) Retention or Lien 78
   (*d*) Compensation 79
   (*e*) Effectual Diligence 80
2. Securities Subordinate to Trustee's Title 82
   (*a*) Inhibitions 83
   (*b*) Poindings of the Ground not Brought to a Sale . . 83
   (*c*) Arrestments not Followed up 83
   (*d*) Personal Poindings not Executed 83
   (*e*) Law Agent's Lien over Title Deeds 83
3. Preferable Debts 83
4. Cautionary Obligations 86
5. Partnership Debts 88

Punishment of Fraudulent Debtors 89
Punishment of Fraudulent Creditors 90

SUMMARY SEQUESTRATION—

Petition 91
Citation Warrant 91
Award 91
Examination of Bankrupt 91
Second Statutory Meeting 91
Payment of First Dividend 94
Subsequent Dividends 94
Report to the Accountant 95
Discharge of Bankrupt 95
Discharge of Trustee 95

EXTRA-JUDICIAL TRUST DEEDS—

Trust Deed 96
Completion of Trustee's Title 98
Intimation to Creditors 98
Realisation and Management of Estate 98
Adjudication upon Claims 99
Notice to Creditors 100
Payment of Dividends 100
Audit of Accounts and Fixing of Trustee's Commission . . 100
Reduction of Trust Deed 100
Diligence against the Trust Estate 101
Discharge of Debtor 102
Removal of Trustee 102

EXTRA-JUDICIAL TRUST DEEDS—*continued.*

PAGE

Appointment of New Trustee 102
Resignation and Assumption of Trustee 102
Discharge of Trustee 103

EXTRA-JUDICIAL COMPOSITION CONTRACTS—

Special Composition 103
General Composition 104
Circular to Creditors 104
Meeting of Creditors 104
Contract 104
Circular to Creditors 105
Payment of Composition 105
Reduction of Contract 105
Challenge of Fraudulent Preferences 106
Discharge of Debtor 106
Discharge of Cautioner 106

APPENDIX.

TEXT OF THE BANKRUPTCY (SCOTLAND) ACT, 1913 . . . *1*
ACT 1621, C. 18 . . . . . *39*
ACT 1696, C. 5 . . . . . *41*
EXCERPTS FROM THE ENGLISH BANKRUPTCY ACT, 1883 . . *42*
EXCERPTS FROM THE ENGLISH BANKRUPTCY ACT, 1914 . . *43*
DEBTORS (SCOTLAND) ACT, 1880 . . . . . *44*
CIVIL IMPRISONMENT (SCOTLAND) ACT, 1882 . . . . *45*
JUDICIAL FACTORS (SCOTLAND) ACT, 1889 . . . . . *47*
EXCERPTS FROM CODIFYING ACT OF SEDERUNT *50*
ACT OF SEDERUNT OF 6TH JANUARY 1914 . . . . . *56*
NOTES BY THE ACCOUNTANT OF COURT FOR THE GUIDANCE OF TRUSTEES IN SEQUESTRATIONS *57*
NOTES BY THE ACCOUNTANT OF COURT FOR THE GUIDANCE OF COMMISSIONERS IN BANKRUPTCY UNDER THE BANKRUPTCY (SCOTLAND) ACT, 1913 . . . . . *68*

SPECIMEN FORMS AND PRECEDENTS (INDEX THERETO) . . . *70*

GENERAL INDEX *103*

TABLE OF CASES.

A

PAGE

A. *v.* B. 61
Adam *v.* Adam's Tr. . . 73
Adam *v.* M'Lauchlan . . 41
Adam & Kirk *v.* Tunnock's Tr. . 44
Adamson; Lindsay *v.* . . 9
Admiralty *v.* Blair's Tr. . . 85
Aikman; M'Caiter *v.* . . 53
Ainslie's Trs.; Robertson *v.* . 106
Ainslie; Woods, Parker & Co. *v.* 106
Aitken's Sequestration . 17, 20, 82
Alexander *v.* Yuille . . . 61
Alexander's Sequestration 52, 53, 53
Allan; Brand *v.* 41
Anderson 43
Anderson *v.* Guild . . . 18
Anderson *v.* Hamilton . . 71
Andrews; Bell *v.* . . . 77
Angus' Trs. *v.* Angus . . 9
Arrol *v.* Montgomery . . 106
Aytoun *v.* Dundee Banking Co. . 89

B

Back; Cairney *v.* . . . 85
Baillie *v.* Young . . . 106
Baird; Blyth *v.* . . . 18
Baird & Brown *v.* Stirrat's Trs. . 83
Bank of Scotland *v.* Hutcheson, Main & Co., Ltd., in Liquidation 67
Bank of Scotland *v.* Youde . 12
Bank of Scotland; Hamilton's Exr. *v.* 43
Bank of Scotland; Harvie's Trs. *v.* 88
Bank of Scotland; Mackinnon's Tr. *v.* 88
Bathgate's Sequestration . . 53
Baxter; Low *v.* 32
Beattie; Caledonian Insurance Co. *v.* 9
Beeton & Co., Ltd., *In re* . . 85
Bell *v.* Andrews . . . 77
Bendy Bros. *v.* M'Allister . . 83
Bennett, *In re* 70
Beveridge; Laurie's Tr. *v.* . 9
Bidoulac *v.* Sinclair's Trs. . . 71
Blaikie; Brown *v.* . . . 40
Blair's Tr.; Admiralty *v.* . . 85
Blyth *v.* Baird 18
Borthwick; Torbet *v.* . . 99
Boyd *v.* Turnbull & Findlay . 84
Bradshaw *v.* J. Kirkwood & Son 64
Brand *v.* Allan . . . 41
British Linen Co.; Galbraith *v.* . 8, 9
Brown *v.* Blaikie . . . 40
Brown *v.* Macintyre . . . 104
Buchanan; Campbell *v.* . . 18

C

Cairney *v.* Back . . . 85
Calder; Davidson *v.* . . 78
Caldwell *v.* Hamilton . 69, 70
Caldwell; Hamilton's Tr. *v.* 56, 69
Caledonian Insurance Co. *v.* Beattie 9
Campbell *v.* Buchanan . . 18
Campbell *v.* Edinburgh Parish Council 81
Campbell *v.* Macfarlane . . 101
Campbell; Scott *v.* . . . 106
Campbell's Trs.; Galbraith *v.* . 82
Canal Basin Co.; Mitchell *v.* . 80
Cannon's Trs. *v.* Lake . . 36
Carter *v.* Johnstone . . . 9
Catton's Trs.; Mackenzie *v.* . 8

	PAGE
Central Motor Engineering Co. *v.* Galbraith	14
Chalmers; Reid *v.*	88
Cheyne; Laing *v.*	8
Clark (Ronald), Petition	52
Clements; Crerar *v.*	43
Clyde Football Co.	85
Clydesdale Bank, Ltd. *v.* M'Intyre	39
Commercial Bank *v.* Wilson	45
Corsan; Crawford *v.*	18
Coutts' Tr. *v.* Webster	9
Craig *v.* Galloway	8, 75
Craig *v.* Hogg	99
Crann & Co.'s Sequestration	19
Crawford *v.* Corsan	18
Crerar *v.* Clements	43
Crookston; Stewart *v.*	50
Crown *v.* Magistrates of Inverness	82

D

Dall *v.* Drummond	101
Davidson *v.* Calder	78
Dawson *v.* Thorburn	8, 75
Dickison; Renton & Gray's Tr. *v.*	8
Dick's Tr. *v.* Whyte's Tr.	83
Dobbie *v.* Thomson	78
Doughty *v.* Wells	98
Drew *v.* Drew	70
Drummond; Dall *v.*	101
Drummond; Wilson *v.*	8, 9
Duff; Menzies *v.*	40
Dundee Banking Co.; Aytoun *v.*	89
Dunlop *v.* Johnston	8, 74
Dunlop *v.* Speirs	88

E

Edinburgh Parish Council; Campbell *v.*	81
Edmond *v.* Grant	8
Elliot *v.* Elliot's Trs.	74

F

Falconer; Rose *v.*	9
Farie; Taylor *v.*	9
Ferguson; Moncrieffe *v.*	98
Ferguson; Pender *v.*	102
Ferguson, Davidson & Co.; Pearson *v.*	69
Ferguson's Tr. *v.* Willis, Nelson & Co.	73
Findlay	45
Findlay; Watt *v.*	68
Fleming's Trs. *v.* M'Hardy	102
Forbes Trs. *v.* Macleod	67
Forrest *v.* Robertson's Trs.	74
Forsyth's Trs.	85
Free Church of Scotland; Traill's Trs. *v.*	81
Freyd's Tr.	47, 226, 245
Frior; Smith *v.*	22

G

Galbraith *v.* B. L. Co.	8, 9
Galbraith *v.* Campbell's Trs.	82
Galbraith *v.* Grimshaw & Baxter	82
Galbraith *v.* Ironside	9
Galbraith; Central Motor Engineering Co. *v.*	14
Galbraith; Lord Advocate *v.*	85
Gall & Ross; Wauchope *v.*	77
Galloway; Craig *v.*	8, 75
Galloway *v.* Henderson	17
Geddes's Trs.	46
Geddes *v.* Waddell	8, 75
Gilfillan	52
Gill; Joel *v.*	12
Gourlay *v.* Mackie	9
Grant; Edmond *v.*	8
Grant; Hatton *v.*	85
Grant; Henderson *v.*	83
Grant; Hepburn *v.*	81
Grant's Trs.; Watson *v.*	75
Grierson *v.* Ogilvy's Trs.	19
Grimshaw & Baxter; Galbraith *v.*	82
Guild; Anderson *v.*	18

H

Hamilton's Exr.; Bank of Scotland *v.*	43
Hamilton's Tr. *v.* Caldwell	56, 69

PAGE

Hamilton; Anderson *v.* . . 71
Hamilton; Caldwell *v.* . 69, 70
Harris *v.* Roxburgh . . . 41
Hart; Montgomery *v.* . . 73
Harvie's Trs. *v.* Bank of Scotland 88
Hatton *v.* Grant . . . 85
Hay; Horne *v.* . . . 8
Hay; Jopp *v.* 101
Hay; Mess *v.* 103
Hay; Moncrieff *v.* . . . 9
Haymant & Sons *v.* M'Lintock . 68
Henderson; Galloway *v.* . . 17
Henderson *v.* Grant . . . 83
Hendrie; Lindsay *v.* 47, 55, 232, 243
Henry *v.* Strachan & Spence . 104
Hepburn *v.* Grant . . . 81
Heritable Reversionary Co. *v.* Miller 67, 72
Hill; Nicoll's Tr. *v.* . . . 76
Hill's Trs.; Scobie *v.* . . 24
Hodge *v.* Wishart . . 24, 39
Hogg; Craig *v.* 99
Horne *v.* Hay 8
Hughson & Dobson; Raleigh *v.* . 80
Hunter; Singer Co. *v.* . . 76

I

Ingram *v.* Singer Co. . . 77
Ireland; North of Scotland Banking Co. *v.* . . . 60
Ironside; Galbraith *v.* . . 9
Ironside *v.* Wilson . . 104, 105

J

Jack's Trs. *v.* Jack's Tr. . . 23
Jackson *v.* M'Kechnie . . 70
Jenkin; Mack *v.* . . . 101
Joel *v.* Gill 12
Johnston 103
Johnston; Dunlop *v.* . . 8, 74
Johnstone; Carter *v.* . . 9
Johnstone's Exrs. *v.* Wilson . 77
Johnstone & Wright; Nicolson *v.* . . . 82, 98, 100, 101
Jones; Taylor *v.* . . . 8

PAGE

Jopp *v.* Hay 101
Jopp *v.* Johnston's Tr. . . 72

K

Keith; Skinner's Tr. *v.* . . 44
Kinnair; Sawers *v.* . . . 78
Kirkcaldy *v.* Middleton . . 98
Kirkwood (J.) & Son; Bradshaw *v.* 64
Klein 85
Kyd *v.* Waterson . 100, 101, 103

L

Laing *v.* Cheyne . . . 8
Laird *v.* Scott 6
Lake; Cannon's Trs. *v.* . . 36
Lang; M'Alpine *v.* . . . 81
Lapraik & Co.'s Sequestration . 18
Laurie's Tr. *v.* Beveridge . . 9
Learmonth *v.* Miller . . . 75
Lindsay; Adamson *v.* . . 9
Lindsay *v.* Hendrie . 47, 55, 232, 243
Little *v.* M'Connell . . . 77
Little; Yeaman *v.* . . . 19
Lockie *v.* Mason . . 101, 102
Logan *v.* M'Rostie . . . 102
Logan's Sequestration . . 88
Lord Advocate *v.* Galbraith . 85
Low *v.* Baxter 32
Lumsden *v.* Sym . . . 45

M

Macfarlane; Campbell *v.* . . 101
Macfarlane *v.* Nicoll . . . 106
Macintyre; Brown *v.* . . 104
Mack *v.* Jenkin . . . 101
Mackay's Sequestration . . 91
Mackenzie *v.* Catton's Trs. . 8
Mackenzie *v.* Fletcher . . 8
Mackersy 71
Mackie; Gourlay *v.* . . 9
Mackinnon's Tr. *v.* Bank of Scotland 88
Maclachlan *v.* Maxwell . 42
Macleod; Forbes Trs. *v.* . . 67

	PAGE
Macnab; Russell *v.*	80
Macpherson *v.* Macpherson's Tr.	70
M'Alister *v.* Swinburne	101
M'Allister; Bendy Bros. *v.*	83
M'Alpine *v.* Lang	81
M'Caiter *v.* Aikman	53
M'Call's Trs.; Ritchie's Trs. *v.*	43
M'Coll's Sequestration	54
M'Connell; Little *v.*	77
M'Cowan *v.* Wright	8, 9
M'Hardy; Fleming's Trs. *v.*	102
M'Inally; Thrashbush Coal Co., in Liquidation *v.*	86
M'Intosh; Strang *v.*	9
M'Intyre; Clydesdale Bank Ltd. *v.*	39
M'Kechnie; Jackson *v.*	70
M'Kenzie *v.* Todd Bros. & Co.	58
M'Kinnon; Monkhouse *v.*	43
M'Lauchlan; Adam *v.*	41
M'Lauchlan *v.* Wilson	77
M'Lay *v.* M'Queen	8, 75
M'Lintock; Haymant & Sons *v.*	68
M'Queen; M'Lay *v.*	8, 75
M'Rostie; Logan *v.*	102
M'Tavish *v.* Matheson	18
M'Vicar, Petitioner	62
Magistrates of Helensburgh *v.* Semple	78
Magistrates of Inverness; Crown *v.*	82
Main & Co., Ltd., in Liquidation; Bank of Scotland *v.*	67
Maitland's Exr.; Romanes *v.*	70
Maitland's Sequestration	40
Marshall's Tr. *v.* Provan	9
Martin's Trs.	43
Mason; Lockie *v.*	101, 102
Matheson; Mactavish *v.*	18
Matthew *v.* Matthew's Tr.	42
Matthew's Tr. *v.* Matthew	9
Maxwell; Maclachlan *v.*	42
Melville *v.* Melville	8, 74
Menzies' Sequestration	19
Menzies' Tr.; Poutz *v.*	81
Menzies *v.* Duff	40
Mercantile Mutual Marine Insurance Association	45
Mess *v.* Hay	103
Middleton; Kirkcaldy *v.*	98
Millar *v.* Romanes	42
Miller; Heritable Reversionary Co. *v.*	67, 72
Miller; Learmonth *v.*	75
Miller *v.* Philip & Son	9
Miller's Tr. *v.* Shield	9
Mitchell *v.* Canal Basin Co.	80
Mitchell *v.* Scott	82, 83
Mitchell *v.* Thomson	97, 103
Moncrieff *v.* Hay	9
Moncrieffe *v.* Ferguson	98
Monkhouse *v.* M'Kinnon	43
Montgomery *v.* Hart	73
Montgomery; Arrol *v.*	106
Morrice *v.* Sprot	8, 75
Mousewell; Queensberry *v.*	8
Muir *v.* Scott	106
Munro *v.* Rothfield	104

N

National Bank of Scotland; Veitch *v.*	88
National Bank *v.* White & Park.	84
Nelson's Trs. *v.* Tod	81
Newspaper Syndicate, Ltd.	85
Nicoll; Macfarlane *v.*	106
Nicoll's Tr. *v.* Hill	76
Nicolson *v.* Johnstone & Wright,	82, 98, 100, 101
North of Scotland Banking Co. *v.* Ireland	60

O

Ogilvy *v.* Taylor	97
Ogilvy's Trs.; Grierson *v.*	19

P

Paterson; Strathdee *v.*	45
Paterson's Tr. *v.* Paterson's Trs.	9
Peacock; Swiss Chocolate Co. *v.*	82
Pearson *v.* Ferguson, Davidson & Co.	69

PAGE

Pender *v.* Ferguson . . . 102
Philip & Son; Miller *v.* . . 9
Poutz *v.* Menzies' Tr. . . 81
Provan; Marshall's Trs. *v.* . 9

Q

Queensberry *v.* Mousewell . . 8

R

Raleigh *v.* Hughson & Dobson . 80
Reid *v.* Chalmers . . . 88
Renny 83, 84
Renton & Gray's Tr. *v.* Dickison 8
Ritchie's Trs. *v.* M'Call's Tr. . 43
Robertson *v.* Ainslie's Trs. . 106
Robertson *v.* Ross . . . 79
Robertson; White *v.* . 52, 230
Robertson's Trs.; Forrest *v.* . 74
Rodgers 86
Romanes; Millar *v.* . . . 42
Romanes *v.* Maitland's Exr. . 70
Rose *v.* Falconer . . . 9
Ross 77
Ross; Robertson *v.* . . . 79
Rothfield; Munro *v.* . . 104
Roxburgh; Harris *v.* . . 41
Royal Bank of Scotland . . 102
Russell *v.* Macnab . . . 80

S

Salaman 101, 103
Sawers *v.* Kinnair . . . 78
Scobie *v.* Hill's Trs. . . . 24
Scott *v.* Campbell . . 106
Scott; Laird *v.* . . . 6
Scott; Mitchell *v.* . . 82, 83
Scott; Muir *v.* . . . 106
Scott; Stiven *v.* . . . 9
Scott & Son *v.* Scott . . 10
Scottish Heritages Co. . . 81
Semple; Magistrates of Helensburgh *v.* 78
Shield; Miller's Trs. *v.* . . 9
Sinclair's Trs.; Bidoulac *v.* . 71
Singer Co. *v.* Hunter . . 76

PAGE

Singer Co.; Ingram *v.* . . 77
Skinner's Tr. *v.* Keith . . 44
Smith *v.* Frior 22
Speirs; Dunlop *v.* . . . 88
Speirs; Wink *v.* . . . 8
Sprot; Morrice *v.* . . . 8, 75
Stewart *v.* Crookston . . 50
Stewart *v.* Stewart's Trs. . . 10
Stirrat's Trs.; Baird & Brown *v.* 83
Stiven *v.* Scott . . . 9
Strachan & Spence; Henry *v.* . 104
Strang *v.* M'Intosh . . . 9
Strathdee *v.* Paterson . . 45
Swinburne; M'Alister *v.* . . 101
Swiss Chocolate Co. *v.* Peacock . 82
Sym; Lumsden *v.* . . . 45

T

Tait's Sequestration . . 32, 61, 64
Taylor *v.* Farie . . . 9
Taylor; Ogilvy *v.* . . . 97
Taylor *v.* Jones . . . 8
Teenan's Tr.; Witham *v.* . 31, 232
Thomas *v.* Thomson . . . 9
Thomson 101
Thomson; Dobbie *v.* . . 78
Thomson; Mitchell *v.* . 97, 103
Thomson; Thomas *v.* . . 9
Thomson *v.* Thomson . . 8
Thomson *v.* Tough's Trs. . . 103
Thomson's Tr.; Wyness *v.* . 99
Thorburn; Dawson *v.* . . 8, 75
Thrashbush Coal Co., in Liquidation *v.* M'Inally . . . 86
Tod; Nelson's Tr. *v.* . . 81
Todd Bros. & Co.; M'Kenzie *v.* . 58
Torbet *v.* Borthwick . . . 99
Tough's Sequestration . 31, 40
Tough's Trs.; Thomson *v.* . 103
Traill's Trs. *v.* Free Church of Scotland 81
Traill's Trs. *v.* Traill's Crs. . 81
Trueman 84
Tuff, *In re* 45
Tunnock's Tr.; Adam & Kirk *v.* 44
Turnbull & Findlay *v.* Boyd . 84

V

PAGE

Veitch *v.* National Bank of Scotland 88

W

Waddell; Geddes *v.* . . . 8, 75
Walker; Whigham *v.* . . 84
Walker's Trs. *v.* Walker . . 18
Warden's Sequestration . . 40
Waterson; Kyd *v.* . 100, 101, 103
Watson *v.* Grant's Trs. . . 75
Watt *v.* Findlay . . . 68
Wauchope *v.* Gall & Ross . . 77
Webster; Coutts' Tr. *v.* . . 9
Wells; Doughty *v.* . . . 98
West Coast Gold Fields, Ltd. . 45
Whigham *v.* Walker . . . 84
White *v.* Robertson . . 52, 230
White & Park; National Bank *v.* 84
Whyte's Tr.; Dick's Tr. *v.* . 83
Williamson's Sequestration 19, 40
Willis, Nelson & Co.; Ferguson's Tr. *v.* 73
Wilson; Commercial Bank *v.* . 45
Wilson; Ironside *v.* . . 104, 105
Wilson; Johnstone's Exrs. *v.* . 77
Wilson; M'Lauchlan *v.* . . 77
Wilson, Petitioner . . . 30
Wilson's Sequestration . . 53
Wilson *v.* Drummond . . 8, 9
Wink *v.* Speirs 8
Wishart; Hodge *v.* . . 24, 39
Witham, Maxwell, *v.* Teenan's Tr. 31, 232
Woods, Parker, & Co. *v.* Ainslie . 106
Wright; M'Cowan *v.* . . 8, 9
Wyness *v.* Thomson's Tr. . . 99

Y

Yeaman *v.* Little . . . 19
Youde; Bank of Scotland *v.* . 12
Young; Baillie *v.* . . . 106
Yuille; Alexander *v.* . . 61

EXPLANATION OF ABBREVIATIONS.

A.	Schedule A of Income Tax Acts, 1842 and 1853.
A. of C. Notes.	Notes by the Accountant of Court for the guidance of Trustees in Bankruptcy, 1st February 1903 (Sequestration); 2nd April 1900 (Cessio); or Notes for the guidance of Judicial Factors issued by the Accountant of Court, April 1905.
A. of C. Notes for Commissioners.	Notes by the Accountant of Court for the guidance of Commissioners in Bankruptcy.
A.S.	Act of Sederunt.
[1904] A.C. 165.	Law Reports (New Series), Appeal Cases, [1904] page 165.
Acct. L.R.	"The Accountant" Law Reports.
Acct. Mag.	The Accountant's Magazine.
B.	Schedule B of Income Tax Acts, 1842 and 1853.
B.A.	Bankruptcy (Scotland) Act, 1913.
B.A.A.	Bankruptcy (Scotland) Amendment Act.
B. & C.A.	Bankruptcy and Cessio (Scotland) Act.
B. & R.S.A.	Bankruptcy and Real Securities (Scotland) Act.
B.P.A.	Burgh Police (Scotland) Act.
B.S.A.	Burgh Sewerage, Drainage, and Water Supply (Scotland) Act.
Bell's *Com.*, ii. 1266.	Professor George Bell's Commentaries on the Law of Scotland, 7th edition by M'Laren, vol. ii. page 1266.
Bell's *Prin.*, s. 1547.	Bell's Principles of the Law of Scotland, 10th edition by Guthrie, section 1547.
Buckley.	Buckley's Law and Practice under the Companies Act, 9th edition.
C.	Schedule C of Income Tax Acts, 1842 and 1853.
C.A.	Companies Act.
C.A.S.	Codifying Act of Sederunt.
7 Ch. App. 309.	Law Reports, Chancery Appeal Cases, vol. vii. page 309.
C.D.	Chancery Division.
30 Ch. Div. 376.	Law Reports, Chancery Division, vol. xxx. page 376.
[1895] 2 Ch. Div. 404.	Law Reports, Chancery Division, [1895] vol ii. page 404.
D.	Schedule D of Income Tax Acts, 1842 and 1853.
D.A.	Debtors (Scotland) Act, 1880.
8 D. 529.	Dunlop's Court of Session Reports, vol. viii. page 529.
1 De G. & J. 606.	De Gex & Jones' Chancery Appeal Reports, vol. i. page 606.
E.	Schedule E of Income Tax Acts, 1842 and 1853.
E.B.A.	[English] Bankruptcy Act.

14 Eq. 278.	Law Reports, Equity Cases, vol. xiv. page 278.
7 F. 1037.	Fraser's Series of Court of Session Reports (5th Series), 1898 to 1906, vol. vii. page 1037.
Nov. 25, 1814, F.C.	Faculty Collection of Court of Session Decisions, 25th November 1814.
Fraser, ii. 1348.	Treatise on Husband and Wife according to Law of Scotland, by Patrick Fraser, LL.D., 2nd edition, vol. ii. page 1348.
F.A.	Finance Act.
Goudy.	Treatise on the Law of Bankruptcy in Scotland, by Henry Goudy, D.C.L., 4th edition by Sheriff Fyfe.
Guthrie, S.C.R. ii. 49.	Guthrie's Sheriff Court Reports, 2nd series, page 49.
J.F.A.	Judicial Factors (Scotland) Act.
[1907] 1 K.B.D. 149.	Law Reports, King's Bench Division, [1907] vol. i. page 149.
L.G.A.	Local Government (Scotland) Act.
L.G.B.	Local Government Board.
L.J.	Law Journal.
79 L.T. 605.	Law Times Reports, vol. lxxix. page 605.
11 M. 185.	Macpherson's Court of Session Reports, vol. xi. page 185.
4 Macq. 267.	Macqueen's Appeal Cases, vol. iv. page 267.
Memo. by A. of C.	Memorandum by Accountant of Court as to investment in Colonial Stocks.
Menzies on Trustees, 1290.	The Law of Scotland affecting Trustees, by A. J. P. Menzies, section 1290.
O.H.	Outer House.
P.H.A.	Public Health (Scotland) Act.
P.L.A.	Poor Law (Scotland) Amendment Act.
25 Q.B.D. 77.	Law Reports, Queen's Bench Division, vol. xxv. page 77.
8 R. 117.	Rettie's Court of Session Reports, vol. viii. page 117.
R. & B.A.	Roads and Bridges (Scotland) Act.
8 S. 146.	Shaw's Court of Session Reports, vol. viii. page 146.
S.A.	Stamp Act.
H.L., 1 Sc. App. 109.	Law Reports, House of Lords Scotch Appeal Cases, vol. i. page 109.
1910 S.C. 34.	1910 Session Cases, page 34.
26 S.C.R. 28.	Scottish Law Review—Sheriff Court Reports, vol. xxvi. page 28.
9 S.L.R. 73.	Scottish Law Reporter, vol. ix. page 73.
8 S.L.T. 328.	Scots Law Times, vol. viii. page 328.
T.A.	Trusts (Scotland) Act.
T.C.A.	Town Councils (Scotland) Act.
16 T.L.R. 452.	Times Law Reports, vol. xvi. page 452.
W.N., 1878, 114.	Weekly Notes, 1878, page 114.

BANKRUPTCY PROCEEDINGS.

I.—INSOLVENCY AND NOTOUR BANKRUPTCY.

INSOLVENCY.

General Definition—

Inability to implement one's obligations according to their terms.

Evidence—

Inter alia—

(*a*) Failure to pay a *liquid debt, e.g.* dishonouring of a past due bill of exchange ; or

(*b*) Calling a meeting of creditors ; or

(*c*) Granting a mandate to apply for sequestration.

A Distinction—

(*a*) *Practical Insolvency, i.e.* inability to meet debts presently due owing to assets being unavailable, but not owing to actual insufficiency in the value of the assets.

(*b*) *Absolute Insolvency, i.e.* actual shortage of assets to meet liabilities as shown by debtor's books or other evidence.

Effects of Absolute Insolvency—

(1) The insolvent is thereafter deemed to be holding his estate in trust as the *negotiorum gestor* of the creditors, and although entitled to continue his ordinary business relations and contract debts, he cannot lawfully make any *gratuitous* alienation of his property, nor enter into any transaction by which a *preference* is given to one creditor to the prejudice of others.

(2) *Gratuitous alienations* may be reduced under common law at the instance of any onerous creditor (see p. 8).

(3) *Fraudulent preferences* may be reduced under common law at the instance of any creditor (see p. 9).

(4) *Gratuitous alienations* to "*conjunct and confident persons*" may be reduced under the Act of 1621 at the instance of

prior onerous creditors or a trustee in sequestration (see p. 8). As to reduction of fraudulent preferences under the Act of 1696, see p. 9.

NOTOUR BANKRUPTCY.

CONSTITUTION (s. 5)—

Notour bankruptcy *commences* when its several requisites concur, and *continues* until debtor obtains his discharge or his insolvency ceases [1] (s. 7).

It is constituted by :—

First—(*a*) Sequestration.

or (*b*) Adjudication of bankruptcy
or (*c*) Receiving order } England or Ireland.

or *Second*—*Insolvency* concurring with

(*a*) *Where a charge is necessary.*

(1) Extract decree for payment (or its equivalent).[2]

(2) Charge for payment duly executed.

(3) Expiry of days of charge without payment.[3]

or (*b*) *Where a charge is unnecessary.*[4]

(1) Extract decree for payment.

(2) Lapse, without payment, of days intervening before poinding or imprisonment can follow on a decree or warrant for payment of a sum of money.

or (*c*) *In cases of rates and taxes.*

Poinding or seizure of moveables.

or (*d*) *In case of debtor owning heritable property.*

Decree of adjudication against heritage in payment or in security.

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[1] It may be reconstituted within such period, not only for purpose of petition for sequestration *but also for purpose of equalising diligences* (s. 7).

[2] A charge can only proceed on a decree or its equivalent—*e.g.* an extract registered protest of a bill or extract registered bond.

[3] Subsequent payment of that particular debt would not *ipso facto* cancel the notour bankruptcy (Laird *v.* Scott, 51 S.L.R. 795).

[4] The only case in which a charge is unnecessary is on a decree in the Small Debt Court granted when the debtor is personally present.

or (*c*) *In case of rent due.*

(1) Sequestration of effects under landlord's hypothec.

(2) Decree for payment.

and (3) Sale of effects thereunder.

Private partnerships may be rendered notour bankrupt in any of the foregoing ways or by rendering an individual partner notour bankrupt for the partnership debt (s. 6).

The necessity in Scotland of first suing the partnership firm before suing any individual partner for a partnership debt is not, it is thought, disturbed by the terms of section 19 of the Partnership Act (see Lindley, 8th ed., p. 933); but having obtained decree against the firm, a charge against the partner may proceed thereon, even although the partner's name is not mentioned in the decree.

Some Effects—

1. Lays estate open to sequestration (see p. 12).
2. Cuts down all *voluntary* transactions granted within sixty days prior to the date thereof or any time thereafter *in satisfaction or further security* of a *prior* debt (see p. 9). Act 1696.
3. Equalises arrestments and poindings used *within sixty days prior* to the constitution thereof or *within four months thereafter* (see p. 10). B.A. 1913, s. 10.

REDUCTION OF GRATUITOUS ALIENATIONS.

	Under Common Law.	Under Act of 1621.[1]
Subjects	Every kind of document by which property is transferred and every transaction reducing the value of the estate, or even a simple delivery of goods or money.	
Nature of conveyance	Whether direct or indirect.	Whether direct or indirect.
To whom	To any person (proof of collusion or knowledge of debtor's insolvency is not necessary) (*M'Cowan* v. *Wright*, 1852, 14 D. 901, 968).	Conjunct or confident persons *only*.
Who can challenge	Any onerous creditors (posterior or prior) (*Edmond* v. *Grant*, 1853, 15 D. 703; *Wink* v. *Speirs*, 1867, 6 M. 77, per Lord Justice-Clerk).	Prior onerous creditors[2] to date of alienation only (*ibid.*) (or trustee in a sequestration whether he represent prior creditors or not) (*Galbraith* v. *B. L. Co.*, 1898, 36 S.L.R. 139).
What challenger has to *aver* or *prove*	1. That transfer was *gratuitous*, or that consideration materially inadequate. 2. That the debtor was *insolvent at and subsequent* to date[3] of making it. 3. That the alienation was made to the *prejudice* of lawful creditors. 4. That he is an *onerous creditor*. NOTE.—The above must be proved, but in transactions of a latent description or where parties are conjunct or confident, the onus of proof may be shifted to the maker (Bell's *Com.*, ii. 184).	1. That receiver of deed is *conjunct* or *confident*. 2. That the deed is *without true, just and necessary cause*. 3. That the debtor was *insolvent at the date*[4] *of granting* the deed. 4. That the debtor is bankrupt or *insolvent at date of raising the action*. 5. That the challenger (except where he is a trustee in sequestration) is a *prior onerous creditor* or a trustee for prior onerous creditors. NOTE.—1, 4, and 5 must be proved; 2 and 3 are presumed. Onus lies on defender to disprove.
Onus of Proof. Non-onerosity[5]	Proof required (Bell's *Com.*, ii. 184).	Presumption of non-onerosity (Bell's *Com.*, ii. 179).
Onus of Proof. Insolvency[6]—1. At date of granting	Proof required (*M'Cowan* v. *Wright*, 1852, 14 D. 901). The insolvency must have continued down to date of challenge.	Presumption of insolvency (Bell's *Com.*, ii. 180).
Onus of Proof. 2. At date of challenge.	Proof required.	Proof required (Bell's *Com.*, ii. 180).
Onus of Proof. Fraudulent intent	Fraud presumed (Bell's *Com.*, ii. 184).	Fraud presumed (Bell's *Com.*, ii. 175).
Examples	(*a*) Voluntary discharge of a debt (*Laing* v. *Cheyne*, 1832, 10 S. 200). (*b*) Granting of a bill or promissory note gratuitously (*Thomson* v. *Thomson*, 1863, 5 M. 1160). (*c*) Giving up a good defence to an action (*Wilson* v. *Drummond*, 1853, 16 D. 275). (*d*) Where property is conveyed direct by a seller to a conjunct person, the insolvent paying the price.	
Points of difference between the common law and the statute	(*a*) To any person except a creditor. (*b*) Prior or posterior creditor may challenge. (*c*) Challenger has to prove debtor insolvent at date of gift. (*d*) Challenger has to prove that no consideration given.	(*a*) To conjunct or confident persons only. (*b*) Only prior creditor (or trustee in sequestration) may challenge. (*c*) Insolvency at date of gift presumed. (*d*) Non-onerosity presumed under Act.

[1] The statute refers to deeds in writing, but this distinction has not always been observed in practice.

[2] *Prior Creditors.*—TRUST DEED.—Trustee, provided (*a*) deed confers power; and (*b*) prior creditors accede to deed. LIQUIDATORS OF PUBLIC COMPANIES, provided they represent prior creditors.

BANKRUPT.—Only recognised when (*a*) reinvested in estate or contracting to pay a composition; and (*b*) if notice has been given to preferred creditor that challenge intended; and also (*c*) bankrupt has stipulated for and received an assignation from other creditors of their right to challenge.

THIRD PARTIES, who may have obtained a prior disposition of subject alienated, whether their right fully completed or not.

[3] See footnote [9].

[4] See footnote [9].

[5] *Onerous consideration* means "a true, just, or necessary cause or a just price." . . . *e.g.* (*a*) value in money or money's worth (*Renton & Gray's Tr.* v. *Dickison*, 1880, 7 R. 951); (*b*) prior legal obligation (*Horne* v. *Hay*, 1847, 9 D. 651; *Taylor* v. *Jones*, 1888, 15 R. 328); (*c*) obligation undertaken in counterpart, *e.g.* marriage contract (Bell, *Com.*, ii. 176; *Mackenzie* v. *Catton's Trs.*, 1877, 5 R. 313; *M'Lay* v. *M'Queen*, 1899, 1 F. 804); (*d*) natural obligation of provision and aliment, *e.g.* husband's obligation to wife, parent's obligation to child. The last mentioned has been held sufficient to validate a provision granted by a husband *during solvency* if irrevocable, and to take effect after the death of the granter, but to extent of a reasonable provision only (*Craig* v. *Galloway*, 1861, 4 Macq. 267), but not if to take effect during marriage (*Dunlop* v. *Johnston*, 1865, 3 M. 758; affd. H.L. 1 Sc. App. 109), or if excessive in amount (*Melville* v. *Melville*, 1879, 6 R. 1286). [But see effect of Married Women's Property (Scotland) Act, 1920, s. 5 *infra*, as to donations within a year and a day of donor's sequestration.] If granted during *insolvency*, it is thought that such cannot compete with or exclude proper contract creditors (*Queensberry* v. *Mousewell*, 1677, M. 961; Goudy, 4th ed., p. 30). As to special provisions *in re* policies of assurance, see p. 73. A post-nuptial provision for *children* granted *during solvency* is effectual if property is actually transferred or a *jus crediti* constituted (*Morrice* v. *Sprot*, 1846, 8 D. 918; *Geddes* v. *Waddell*, 1836, 14 S. 1084). If granted *during insolvency* it is ineffectual (*Dawson* v. *Thorburn*, 1888, 15 R. 891).

[6] Must be absolute insolvency; but it seems sufficient that alienation itself has been cause of this (Bell, *Com.*, ii. 228; *Mackenzie* v. *Fletcher*, 1712, M. 924; *cf.* per Lord M'Laren in *M'Lay* v. *M'Queen*, 1899, 1 F. at p. 811).

REDUCTION OF FRAUDULENT PREFERENCES.

	Under Common Law.	Under Act of 1696.
Subjects	Every transaction by which a preference can be conferred on a creditor, *except* [7]— (*a*) Cash payments of debts actually due (*M'Cowan* v. *Wright*, 1853, 15 D. 503, per L. J.-C. Hope; *Coutts' Tr.* v. *Webster*, 1886, 13 R. 111, per Lord Young). (*b*) *Nova debita* [8] (*Miller's Tr.* v. *Shield*, 1862, 24 D. 821). (*c*) Transactions in ordinary course of trade (*Thomas* v. *Thomson*, 1866, 5 M. 198). (*d*) Implement of prior obligation to grant a specific security (*Taylor* v. *Farie*, 1855, 17 D. 639).	
Nature of conveyance	Whether direct or indirect, but must be *voluntary* (*Stiven* v. *Scott*, *infra*).	
To whom	To any Creditor. Apparently collusion or knowledge of debtor's insolvency need not be proved (*M'Cowan* v. *Wright*, 1852, 14 D. 901, 968; 1853, 15 D. 494).	Proof of collusion or knowledge of debtor's insolvency unnecessary.
Who can challenge	Any creditor (Goudy, ch. iv. 5).	Prior creditors [9] to date of preference only, or trustee in sequestration whether representing prior creditors or not (*Galbraith* v. *B. L. Co.*, 1898, 36 S. L. R. 139).
What challenger has to *aver* or *prove*	1. That the deed is *voluntary*, and in satisfaction or further security of a *prior debt*. 2. That the debtor was *insolvent at and subsequent to the date* [9] *of making it*. 3. That the debtor was conscious of his insolvency (*Galbraith* v. *Ironside*, 51 S.L.R. 144). 4. That the preference was given to the *prejudice* of his lawful creditors.	1. That the debtor is *notour bankrupt*. 2. That the deed is voluntary, and in satisfaction or further security of a *prior debt*. 3. That it has been granted [9] at or *after*, *or within sixty days* before, notour bankruptcy. 4. That (except where by a trustee in a sequestration) the challenge is made by or on behalf of *prior creditors*.
Onus of Proof. Non-onerosity	Must prove transaction is voluntary and in satisfaction or further security of a prior debt.	
Onus of Proof. Insolvency—1. At date of granting	Proof required (debtor must have been conscious of insolvency). This may be inferred from circumstances (*M'Cowan* v. *Wright*, 1853, 15 D. 498; *cf.* 1852, 14 D. 970, a case of gratuitous alienation), and insolvency must have continued down to date of challenge.	Presumption of insolvency.
Onus of Proof. Insolvency—2. At date of challenge.	Proof required.	Notour bankruptcy must be constituted at or before, or within sixty days of preference.
Onus of Proof. Fraudulent intent	Fraud presumed, transaction being (1) voluntary; (2) during insolvency; (3) while debtor conscious of latter.	Fraudulent intent not necessary, unless transaction comes under excepted cases stated at top of page.
Examples	Direct— (*a*) Security given to a creditor previously unsecured (e.g. *Miller* v. *Philip & Son*, 1883, 20 S.L.R. 862). (*b*) Endorsation of a bill or cheque to an unsecured creditor (*Carter* v. *Johnstone*, 1886, 13 R. 698). Indirect— (*a*) Paying a claim prematurely, before the due date under the contract (*Rose* v. *Falconer*, 1868, 6 M. 960). (*b*) Facilitating proceedings by the creditor to obtain decree or to execute diligence (*Matthew's Tr.* v. *Matthew*, 1867, 5 M., per L. P. Inglis at p. 963; *Strang* v. *M'Intosh*, 1821, 1 S. 1). (*c*) Abandoning a good defence to an action (*Wilson* v. *Drummond*, 1853, 16 D. 275; *Laurie's Tr.* v. *Beveridge*, 1867, 6 M. 85). (*d*) Selling goods to a creditor so that he may set off the price against an existing claim (Bell's *Com.*, ii. 199; *Marshall's Tr.* v. *Provan*, 1794, M. 1144).	
Points of difference between the common law and the statute	(*a*) Any creditor, whether prior or posterior. (*b*) Challenger has to prove debtor insolvent at date of preference. (*c*) No restriction as to time. (*d*) Trust deed for creditors is not reducible at common law.	(*a*) Only a prior creditor or trustee in sequestration. (*b*) Insolvency at date of preference presumed. (*c*) At or after or within sixty days prior to notour bankruptcy. (*d*) Trust deed for creditor is reducible under statute.

[7] These can only be reduced on proof of fraudulent contrivance between debtor and creditor (see *Angus' Tr.* v. *Angus*, 1901, 39 S.L.R. 119).

[8] *Nova Debita.*—(1) If security completed at date of transaction it cannot be reduced whether granted before, at, or after date of notour bankruptcy. (2) If security not then delivered or completed (*a*) it is valid if its completion within sixty days does not depend upon some voluntary act of the debtor, but upon some further action of the creditor (*Lindsay* v. *Adamson*, 1880, 7 R. 1036, per L. P. Inglis; *Caledonian Insurance Co.* v. *Beattie*, 1898, 5 S.L.T. 349); (*b*) the implement by an insolvent of an obligation to grant a specified security, instantly and unconditionally enforceable at date of making the loan, is likewise valid (*Stiven* v. *Scott*, 1871, 9 M. 923, per L. P. Inglis at p. 933; also *Taylor* v. *Farie*, 1855, 17 D. 639); (*c*) but an obligation to grant a specified security at some indeterminate time or on certain conditions cannot be implemented (*ibid.*; *Moncrieff* v. *Hay*, 1851, 14 D. 200; *Gourlay* v. *Mackie*, 1887, 14 R. 403); (*d*) nor an obligation to grant an unspecified security (*ibid.*; *Paterson's Tr.* v. *Paterson's Trs.*, 1891, 19 R. 91).

[9] The date of a deed, under the Act 1696 or the B.A. 1913, is the date of registration or of delivery or of intimation, or of such proceeding as is requisite for rendering same effectual (B.A., s. 4).

EQUALISATION OF DILIGENCES.

(Section 10.)

Arrestments and *Poindings* used within *sixty days prior* to notour bankruptcy or within *four months thereafter* rank *pari passu* on the fund arrested.[1] Those subsequent to that period rank only on any *reversion* (s. 10).

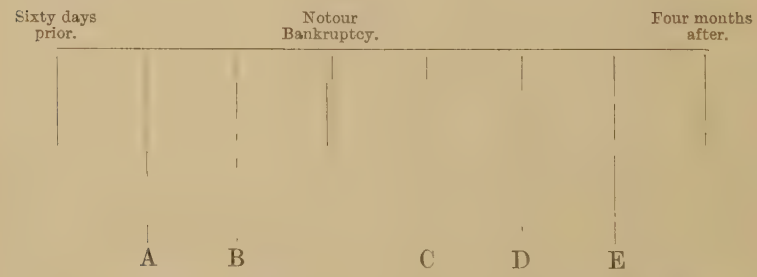
A *second or subsequent constitution* of notour bankruptcy has now a similar effect (s. 7).

Sequestration (as at the date thereof) is equivalent to (*a*) an arrestment in execution and decree of furthcoming; and (*b*) an executed or completed poinding. The trustee is therefore entitled, on behalf of the general body of creditors, to rank *pari passu* with diligences which were used on or subsequent to the sixtieth day prior to the notour bankruptcy on which the sequestration was founded, but which are not cut down altogether by s. 104 as under.

Further, all arrestments and poindings *on or after the sixtieth day prior to the sequestration are of no effect* save that an arrester or poinder before date of sequestration is entitled to a *preference in the ranking* in respect of the *expenses* of procuring the warrant for and executing the diligence (s. 104, see p. 84).

The effect of these provisions is best illustrated by a series of diagrams.

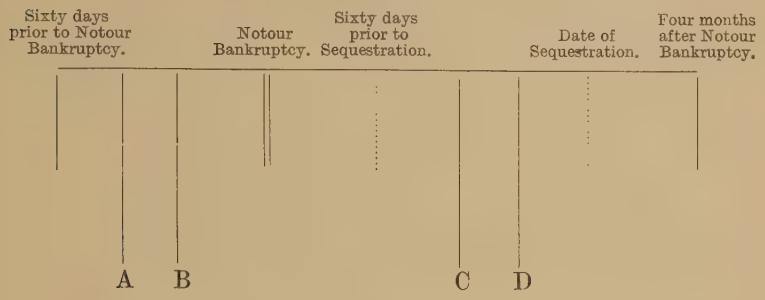
DIAGRAM I.



The arrestments marked A, B, C, D, and E are equalised, *i.e.* rank rateably on the proceeds of the subject attached.

[1] Arrestments used *on dependence* of an action must be followed up without delay. A creditor judicially producing in process, relative to subject of diligence, liquid grounds of debt, or decree within the stated period, is entitled to rank as if he had executed an arrestment or poinding, and he may raise a direct action against the selling creditor for his share, or raise an action of multiplepoinding, and thus in either case create a process in which he can produce his documents (Scott & Son *v.* Scott, 30 S.C.R. 166; Stewart *v.* Stewart's Trs., 32 S.C.R. 43). Any creditor selling is accountable for the proceeds (less expenses of diligence) to those entitled to a *pari passu* ranking as above (s. 10).

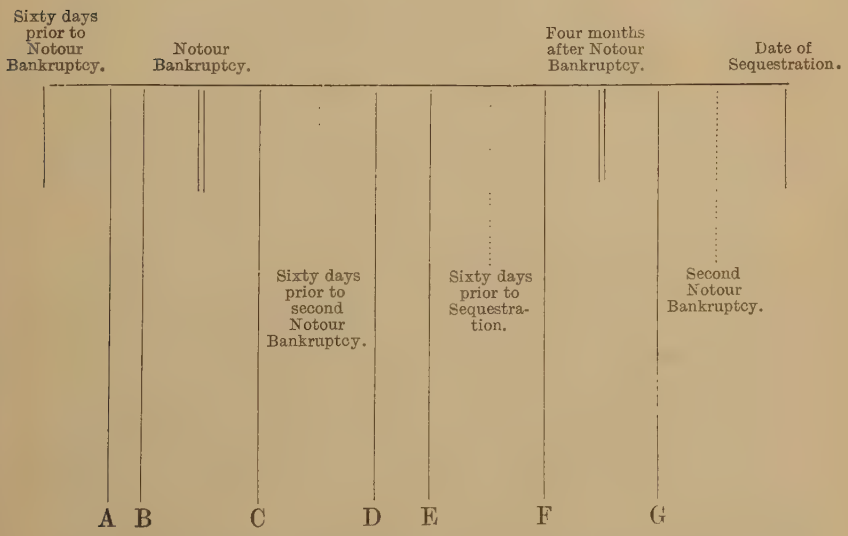
DIAGRAM II.



The arrestments C and D being within sixty days prior to sequestration are of no effect (s. 104).

The arrestments A and B being within sixty days prior to notour bankruptcy and the sequestration within four months after notour bankruptcy, the trustee, as representing the body of creditors of the bankrupt, is entitled to a *pari passu* ranking with A and B on the subject arrested, which has practically the effect of cutting these down also (see p. 81, note 2 ; ss. 104 and 10).

DIAGRAM III.



The arrestments A to F inclusive rank rateably on the subject arrested (s. 10), but F being within the sixty days preceding the sequestration, his share would fall to the trustee by virtue of s. 104.

The arrestment G is of no effect (s. 104).

The question arises whether the arresters D and E would require to admit the trustee to a *pari passu* ranking with them on the shares falling to them under their equalised ranking with A, B, and C. Such a course is, however, inconsistent with the last clause of s. 10, which provides that the "later" diligences *shall not compete* with the "earlier."

II.—SEQUESTRATION.

PETITION.

BY WHOM ?[1]

1. *The Debtor* (s. 11, 1 (A)).

REQUISITES—

(*a*) Concurrence of creditor(s) duly qualified (see p. 13).
(*b*) *Debtor* subject to jurisdiction of Court of Session.[2]

2. *Creditors duly Qualified* (see p. 13 ; s. 11, 1 (B)).

REQUISITES—

(1) *In case of a Living Debtor.*
(*a*) Debtor *subject to jurisdiction* of Court of Session.
(*b*) *Notour bankruptcy* constituted within previous four months (*ibid.* s. 13).
(*c*) Debtor must have *resided* or *had dwelling-house* or *place of business* in Scotland *within* previous year (*ibid.* s. 11, 1 (B)).[3]

Unless consent of debtor obtained.

NOTE.—If petition is in Sheriff Court, *continuous* residence,

[1] In the event of the withdrawal, bankruptcy, or death of petitioning or objecting creditor, another creditor may be sisted in his place (s. 33).

[2] *Grounds of jurisdiction—*
1. Domicile ; or
2. Ownership of real estate ; or
3. Forty days' continuous residence in one locality (Joel *v.* Gill, 1859, 21 D. 929).

An existing English sequestration, even although a dead letter, prevents the award of a sequestration in Scotland (Bank of Scotland *v.* Youde, 1908 (O.H.), 15 S.L.T. 847).

[3] In the case of a company, it must have carried on business and had a partner resident or having a dwelling-house in Scotland, or alternatively the company must have had a place of business in Scotland within the previous year (s. 11, 1 (B)).

etc., for previous year in Sheriffdom is requisite. Failing this condition, the petition must be presented in the Court of Session (s. 16).

(2) *In case of a Deceased Debtor* (s. 11, 2 (B)).[1]

(*a*) Debtor must have been subject to jurisdiction of Court of Session at date of decease.

(*b*) Sequestration will not be granted until expiry of *six* months from decease, unless—

Debtor was notour bankrupt at decease ; or

Successors concur in petition or renounce succession (*ibid.* s. 13).

NOTE.—If petition is in Sheriff Court, it is necessary to show that the debtor has resided or carried on business in Sheriffdom continuously during the year *preceding his decease.* Failing this condition, the petition must be presented in the Court of Session (s. 16).

3. *Mandatory of Deceased Debtor* (s. 11, 2 (A)).

(*a*) Debtor must have been subject to jurisdiction of Court of Session at date of decease.

(*b*) Mandate the only other requisite.

QUALIFICATION OF CREDITORS (s. 12).

One or more creditors to extent of £50 in all.

Debts may be liquid [2] or illiquid, present or future, but not contingent.

PRODUCTIONS RELATIVE (s. 20).

1. Oath [3] or affirmation stating—

(*a*) Security held.
(*b*) Co-obligants. } If neither, state so.

[1] The creditors have the option of applying for the *immediate* appointment of a judicial factor to *wind up* the estate of a deceased debtor under s. 163. In the event of competing petitions, sequestration, being the higher remedy, will apparently take precedence, but in that event an *interim* judicial factor may be appointed under s. 14 (see p. 16).

[2] Liquid = ascertained, and constituted by formal document ; *e.g.* bond, bill, or decree.

[3] A defective petitionary oath cannot be rectified (s. 47).

The oath within the United Kingdom may be taken before a judge, magistrate, J.P., notary public, or commissioner in the High Court of Justice in England or Ireland (s. 21). The oath by a creditor abroad may be taken before a magistrate or J.P., or other person qualified to administer oaths there (such persons being certified as such by a British minister or British consul or a notary public), or the known agent or mandatory of

(*c*) If debtor deceased, place resided or had dwelling-house or carried on business at time of death, and whether owned estates in Scotland (s. 23).

2. Account and voucher of debt.
3. Written evidence of notour bankruptcy.

FORM (s. 20).

Signed by petitioner or counsel or agent.
If signed on behalf of a debtor, a company, or a creditor, etc., the *mandate* must be produced.

States—Amount of petitioner's debt.
Debtor notour bankrupt within previous four months.
Debtor resided, etc., in Scotland (or Sheriffdom).
,, subject to jurisdiction of Court.

Prays—Warrant of citation (if necessary).
Thereafter sequestration.
,, meeting for election of trustee.
,, remit to Sheriff (if in Court of Session).

CITATION WARRANT.[1]

Where the petition is without consent of debtor or, if debtor deceased, his successors (ss. 25 to 27).

Warrant—

1. Orders citation of debtor [2] or successors.
2. Directs *intimation* in *Gazette*.
3. Grants diligence to recover evidence of notour bankruptcy.

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said creditor in the United Kingdom may make an oath of *credulity* in manner above provided (s. 22).

In the case of a corporation the oath of *verity* may be made by the secretary, manager, cashier, clerk, or other principal officer, or in other companies by a partner (s. 24).

In the case of creditors incapax an oath of *credulity* may be made by the authorised agent, factor, or guardian (s. 24).

[1] The sequestration dates from the first deliverance, although the actual award may not be made until a later date (s. 41); and in case of a *deceased debtor* it is incompetent, after the first deliverance, for a creditor to be confirmed executor-creditor, or to raise or insist in any adjudication against the estate (s. 29).

[2] As to whether, in the case of a petition for sequestration of estates of a firm and its partners, the citation only of the firm is sufficient, see conflicting opinions in Central Motor Engineering Co. *v.* Galbraith, 1918 S.C. 755.

Method of citation [1]—

1. *Scotland*—Personally, or by registered post to house or place of business.
2. *Out of Scotland*—Edictally (*i.e.* by delivering a copy at the office of the Keeper of Edictal Citations) (13 & 14 Vict. c. 36, s. 22). A copy must also be left at house or place of business last occupied (s. 25), and if address in England or Ireland is known, a copy must be sent there by registered post (s. 27).

Inducice—

Personally, etc., six to fourteen days.
Edictally, fourteen days (*ibid.* s. 27).

Registration—

Certified copy of first deliverance forwarded to Accountant of Court by Clerk of the Bills or Sheriff-Clerk forthwith (s. 156).

OBJECTIONS TO PETITION.

1. Want of jurisdiction over debtor (s. 11).
2. Insufficient vouching of debt (s. 20).
3. Want of mandate where necessary (s. 20).
4. Notour bankruptcy not properly constituted (s. 11, 1 (B)); *ante*, p. 6).
5. Sequestration already granted in another Court and undischarged (s. 16); or prior petition is in dependence before any Court, and remit to such Court should be made (s. 16).[2]

[1] In the case of a company, the warrant is served at place of business, provided a partner, a clerk, or a servant of the company be there; failing that, at the house of an acting partner, or edictally (s. 26). Where tutors or curators of minor children or lunatics are not known, they may be cited edictally (39 & 40 Vict. c. 70, s. 12 (4)). Citation may in all cases be made by a competent officer without witnesses or by registered letter, conform to provisions of the Citation Amendment Act, 1882 (45 & 46 Vict. c. 77) (B.A. s. 171).

[2] Where sequestration has been *awarded* in two or more counties, the later may be remitted to the first in date (s. 17). Except in regard to the interim preservation of the estate no proceedings of any Court, other than that before which the sequestration comes to depend, are effectual (s. 18). On appeal to the Court of Session or Lord Ordinary a sequestration may be transferred from one Sheriff Court to another (s. 19).

INTERIM PRESERVATION OF ESTATE.

1. *Warrant of Search and Seizure* (s. 15).
   Granted by Sheriff upon cause shown or without application.
2. *Warrant to Postmaster to deliver letters to Sheriff-Clerk* (s. 187).
   Granted by the Lord Ordinary or Sheriff (on cause shown), covering a period of three months, and subject to renewal on expiry of that time.
   The letters are opened in presence of the Sheriff after written notice to bankrupt to attend.
3. *Appointment of Judicial Factor* (s. 14).
   By Court of Session or Sheriff Court,[1] any time prior to confirmation of trustee.
   Upon cause shown or without special application.
   Caution for intromissions.—Bond lodged with Bill Chamber Clerk or Sheriff-Clerk.
4. *Such other proceedings as the Court may deem requisite* (s. 14).

ABBREVIATE FOR REGISTER OF INHIBITIONS.

(Section 44 and Schedule A, Nos. 1 and 2.)

Lodged before expiry of second lawful day after first deliverance.[2]

The abbreviate, endorsed with certificate by Keeper of the Register, is returned on payment of fee and postage, and has the effect of an inhibition and of a citation in an adjudication of the debtor's estates lasting for a period of five years, after which it may be renewed if necessary.

AWARD OF SEQUESTRATION.

(Section 29.)

The Deliverance of Lord Ordinary or Sheriff—

1. Awards sequestration.
2. Declares estate to belong to creditors.

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[1] If appointment made by Sheriff, it is subject to appeal to Court of Session (s. 14).

[2] This, in order to prevent bankrupt alienating, or incurring debt against the heritable property, and to preserve the heritable property from diligence by creditors (Bell's *Com.*, ii. 134 and 145). If the deliverance is in the Sheriff Court it is sufficient if the abbreviate is *transmitted by post* before expiry of said period (s. 44).

3. Appoints meeting (six to twelve clear days from notice of award in *Edinburgh Gazette*) (s. 63).
4. Remits to Sheriff (if in Court of Session) (s. 17). The sequestration may on appeal be transferred from one Sheriff Court to any other (s. 19).

TRANSMISSION OF PROCESS TO SHERIFF-CLERK.

(Section 42.)

Where the award is in the Court of Session—

A copy of petition,
The first deliverance (citation),
The second deliverance (sequestration),
And relative productions,
} Certified by Bill Chamber clerk,

must be transmitted to Sheriff-Clerk by petitioning or concurring creditors.

GAZETTE NOTICE.[1]

(Section 44 and Schedule B.)

Within { Four days [2] in *Edinburgh Gazette* / Six days in *London Gazette* } *from deliverance awarding sequestration.*

States.—Date of first deliverance.
Date of meeting to elect trustee and commissioners.
Last date for lodging claims.[3]

FIRST STATUTORY MEETING.[4]

Preses (s. 64).

Sheriff, if notice given by two or more creditors.

Otherwise Preses appointed by meeting. (But not necessarily a creditor. Aitken's Sequestration, 26 S.C.R. 169.)

[1] This is the only notice in sequestration that requires to be inserted in the *London Gazette*. Copies of the *Edinburgh Gazette* are filed with the Accountant of Court, and are open for public inspection at office hours free of charge (s. 188).

[2] The days run as from date of award (if in Court of Session), or from time when copy could be received by post in Edinburgh (if in Sheriff Court) (s. 44).

[3] Where claim is lost after being lodged in process the creditor can claim to vote and draw dividends without further production. The trustee may, however, appeal to the *nobile officium* (see note 1, p. 60) of the Court to order fresh claim to be lodged (Galloway *v.* Henderson, 1849, 12 D. 394).

[4] The first statutory meeting may be adjourned, but not beyond the limit fixed by the Act, viz. twelve days from date of *Gazette* notice of the sequestration having been awarded (ss. 63 and 64).

CLERK (s. 64).

(*a*) *Sheriff-Clerk or his Depute* (if Sheriff presiding) ; or

(*b*) *Sheriff-Clerk or his Depute* or a *Clerk* appointed by meeting (if Sheriff is *not* presiding).

OATH (ss. 45 and 21).

Must be *definite* as to amount,[1] and

State the *value of each security* held, and of the claim against *each co-obligant* or that there are neither of these (s. 55).

Interest to be added or deducted *where applicable.* (Rate, 5 per cent. apart from agreement) [2] (s. 48).

Trade discounts to be deducted, but not cash discounts (s. 48).

See p. 40.

PRODUCTIONS.

Voucher of debt.[3]

Detailed account.

SCRUTINY OF OATHS AND PRODUCTIONS OF CREDITORS (s. 64).

Marked by Sheriff-Clerk or Preses.

Entered in Sederunt Book.

Retained by or Transmitted to Sheriff-Clerk for custody till trustee appointed, subject to exhibition thereof on application.

BANKRUPT'S STATE OF AFFAIRS AND RENTAL (s. 77).

Delivered to Clerk.

States—

Whole property, including *spes successionis.*

Debtors' and creditors' names and addresses.

Amount of their debts respectively.

Rental of heritable property.

Subscribed by bankrupt.

Handed to trustee and engrossed in Sederunt Book.

ELECTION OF TRUSTEE.

(*a*) *Disqualifications* (s. 64). See Mactavish *v.* Mathieson, 1824, 3 S. 277 ; Crawford *v.* Corsan, 1827, 6 S. 127 ; Campbell *v.* Buchanan, 1840, 2 D. 1183 ; Blyth *v.* Baird, 1825, 4 S. 154.

[1] Contingent claims and annuities may be valued; see *post*, pp. 42 and 45. A co-obligant or cautioner paying such value is entitled to an assignation of the debt, and can enter a claim on the sequestrated estate (ss. 51 and 52).

[2] Interest, however, is not due unless contracted for, as in case of a bond or *ex lege* as in the case of a bill of exchange. Where a bill is not due at date of sequestration interest falls to be deducted.

[3] A conjunct or confident creditor who holds the bankrupt's acknowledgment of debt must produce also before he can vote some corroborative voucher, such as a detailed account, excerpts from books or other writings ; or, failing these, must explain in his oath the nature and history of the transactions leading up to the granting of the acknowledgment founded on (Anderson *v.* Guild, 1852, 14 D. 866 ; Walker's Trs. *v.* Walker, 1883, 10 R. 699 ; Lapraik & Co.'s Sequestration, 1916, 32 S.C.R. 281).

COMMON LAW.
- Personal incapacity.
- Hostility to bankrupt.
- Incongruity of duties.
- Personal misconduct.

STATUTE.
- Bankrupt himself.
- Persons conjunct or confident.
- Interest opposed to general interests of creditors.[1]
- Outwith jurisdiction of Court of Session.

(*b*) *Nomination* (s. 96).

By majority in value of creditors or mandatories.[2]

(*c*) *Appointment* (ss. 65 and 66).

By declaration of Sheriff [3] at meeting or subsequently (see under). Where Sheriff not present, Preses must report nomination and proceedings.

(*d*) *Disposal of Objections.*

1. *If Sheriff present* (s. 65).

(*a*) He may decide forthwith, or

(*b*) Make avizandum and (if necessary) note of objections and answers. Thereafter—

Hears parties within four days, *vivâ voce.*

Declares appointment.

Makes note of grounds of decision.

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[1] Where between two sequestrations there exist opposing interests the trustee on one may be refused the trusteeship on the other (Menzies' Sequestration, 31 S.C.R. 206).

[2] Persons acquiring debts after sequestration otherwise than by succession or marriage, and the wife of the bankrupt and any trustee for her, have no vote in the election of trustee or commissioners (s. 60). Nor postponed creditors (Crann & Co.'s Sequestration, 1909, 25 S.C.R. 238). Nor creditors who have not in their possession the voucher of their debt (s. 46). As to general rules of voting, see *post*, p. 31 ; as to general objections to claims, see p. 40.

Two or more trustees to act in succession in case of non-acceptance, death, resignation, removal, or disqualification may be elected, and in case of a company one trustee or separate trustees on the estates of the company and each partner (s. 64), but a meeting of creditors is necessary to devolve the estate on a trustee in succession unless where the failure of the trustee previously named has occurred prior to deliverance of Sheriff declaring appointment (s. 71). The expenses as fixed by the Court of any competition for the office of trustee must be paid by the unsuccessful to the successful party, and in no case may they come out of the funds of the estate (s. 68).

[3] The Sheriff's judgment is final (ss. 67 and 70), even although he has made a mistake in law or in fact (Yeaman *v.* Little, 1906, 8 F. 702), but not if he has acted *ultra vires* (Grierson *v.* Ogilvy's Trs., 1908, 45 S.L.R. 723, per Lord President).

Where the business of a deceased had been carried on by his testamentary trustee, *opinion* expressed that creditors for debts incurred by the trustees were not entitled to vote in the election of a trustee under a subsequent sequestration (Williamson's Sequestration, 1912, 28 S.C.R. 244, per Sheriff-Substitute Graham).

2. *If Sheriff not present* (s. 66).
   Preses reports forthwith to Sheriff, and if Sheriff-Clerk not present transmits to latter the creditors' oaths.
   Objectors lodge notes with Sheriff-Clerk within four days.
   Sheriff hears parties forthwith, *vivâ voce*.
   Declares appointment.
   Makes note of grounds of decision.

(*e*) *Caution* (s. 69, and Schedule C).
   Meeting fixes amount, and decides as to sufficiency of caution offered [1] (see below).

Election of Commissioners [2] (s. 72).

Three creditors or mandatories, or less if less have claimed.
Procedure same as for election of trustee.
Except :—1. Caution for intromissions } not necessary.
2. Confirmation of election }
Majority a quorum.
Gratuitous office.

Minutes (s. 64).

Written by Clerk in presence of meeting.[3]
Signed by Sheriff or Preses.
Contain—
(*a*) Names and designations of creditors (or mandatories) and amount of each claim.
(*b*) Deliverance of Sheriff (if present).
(*c*) Whatever Sheriff or Preses deems fit.

TRUSTEE'S CONFIRMATION.

(Section 70.)

Bond of Caution [1] (Schedule C).

Signed by cautioner and trustee.
Lodged with Sheriff-Clerk *within seven days of deliverance* appointing him (s. 69).

[1] The bond of a guarantee society may be accepted and the premium thereon charged against the estate (s. 69).

[2] The duty of the commissioners is to superintend the proceedings, give advice and assistance to the trustee, decide as to dividends, ascertain situation of estate from time to time. Anyone may specially report to general meeting of creditors (s. 81) (but see note 1, p. 43).

[3] May be prepared in skeleton beforehand, excluding the names of creditors present (Aitken's Sequestration, 26 S.C.R. 167).

ACT AND WARRANT [1] issued by Sheriff-Clerk (s. 70 and Schedule D).

REGISTRATION—

Register of Sequestrations—

Copy sent *by Sheriff-Clerk* to the Accountant of Court *within three days* (s. 70, A. of C. Notes, s. 2).

Copies of all circulars issued from time to time must be sent to the Accountant (s. 80).

NOTE.—Where bankrupt holds real estate in England or Ireland, or elsewhere in British Dominions, act and warrant must be registered in chief Court of Bankruptcy in country where estate situated (s. 97 (3)).

Register of Inhibitions and Adjudications—

Abbreviate to be lodged within ten days after confirmation of the first and every new trustee (s. 75 and Schedule E, No. 1).

COMPLETION OF TRUSTEE'S TITLE TO ESTATE.[2]

BY VIRTUE OF THE ACT AND WARRANT (ss. 70 and 97).

1. *Without further procedure* in case of
   (*a*) Debts, corporeal moveables, etc.
   (*b*) Short leases, liferents, and other heritable rights not requiring infeftment or registration.

[1] A copy of the act and warrant purporting to be certified by the Sheriff-Clerk and to be authenticated by a judge of the Court of Session must be received throughout His Majesty's dominions as *prima facie* evidence of the trustee's title, without proof of the signatures (s. 70).

[2] The bankrupt is bound under penalty of imprisonment and forfeiture of benefit of the Act to give every information and assistance and grant all deeds requisite for the recovery and disposal of the estate (ss. 77 and 100).

The following writings are exempt from stamp duty or other Government duties :—

1. All conveyances, assignations, instruments, discharges, writings, or deeds relating solely to estate of bankrupt which after the execution thereof remains his estate for the benefit of his creditors or the trustee.
2. All discharges to the bankrupt.
3. All deeds, assignations, instruments, or writings for reinvesting the bankrupt.
4. All powers of attorney, commissions, factories, oaths, affidavits, articles of roup or sale, submissions, decrees arbitral, and all other instruments and writings whatsoever relating solely to the bankrupt's estate.
5. All other deeds or writings forming a part of the proceedings ordered under the sequestration (s. 189).

2. *Followed by*—

(*a*) *Registration* in case of { Shares in companies and ships. / Patents. / Copyrights. / Trade marks, etc. / Long leases.

(*b*) *Infeftment* in case of heritable property requiring infeftment [1] (s. 100).

Extent of Trustee's Title (see p. 67).

WARRANT TO RECEIVE AND OPEN LETTERS ADDRESSED TO BANKRUPT.

The Lord Ordinary or Sheriff may order that, for a period of not more than three months, all letters addressed to bankrupt be delivered to the Sheriff-Clerk or the trustee, to be opened in the presence of the Sheriff after written notice to bankrupt to attend. This order may be renewed for a like period as often as necessary (B.A., s. 187).

[1] The trustee may complete title in his own person and his successors in office or in the person of the bankrupt, but such completion of title in the bankrupt is not to have *the effect of validating accretione imperfected rights in favour of any person other than the trustee* (s. 100).

As between the trustee in sequestration and a creditor holding an unregistered security over property requiring infeftment it is a race for infeftment, the first completed right being preferable (ss. 4 and 97 ; Smith *v.* Frior, 1857, 19 D. 384).

The trustee may, however, without making up a feudal title and without bankrupt's concurrence, grant such conveyances as the bankrupt could competently have granted (s. 100).

Where successor of deceased bankrupt has made up title to the latter's heritable estate, the trustee may recover as follows (s. 101) :—

1. Petition by trustee to Lord Ordinary or Sheriff.
2. Petition intimated—answers within fourteen days.
3. Abbreviate of petition and deliverance recorded in Registers of Inhibitions and Adjudications (Schedule A, No. 3).
4. On expiry of fourteen days Lord Ordinary or Sheriff pronounces judgment.
5. Within eight days thereafter an abbreviate of petition and deliverance recorded in Registers of Inhibitions and Adjudications (Schedule E, No. 3).

INVENTORY AND VALUATION.

(Section 76.)

Trustee *takes possession as soon as possible.*

Prepares *inventory and valuation* showing estimated value and annual revenue of estate.

Where *separate* inventories have been obtained of particular portions of the estate, it is sufficient to make reference to these for details. Secured debts should be specified but not deducted (A. of C. Notes, Appendix I.).

Copies sent forthwith to the Accountant of Court certified by trustee (A. of C. Notes, Appendix I.).

Notice of appointment should be issued to debtors immediately to prevent bankrupt uplifting debts ; see *post*, p. 69 (4).

The trustee must keep regular accounts and transmit copies to Accountant (s. 80).

Separate accounts must be kept for the company's and the individual partners' estates (A. of C. Notes, No. VI.).

EXAMINATION OF BANKRUPT, Etc.

1. Trustee applies to Sheriff within *eight days of confirmation* (s. 83).

2. Sheriff grants Warrant for Bankrupt to attend for Examination in Sheriff Court House *seven to fourteen days after date of warrant. Also*, where necessary, *bankrupt's family, clerks, etc.*[1] (see under) (ss. 83, 86, and 87).

3. Gazette Notice (s. 83, and Schedule F), stating :—

Name of trustee.
Names of commissioners.
Day, hour, and place of examination.
Date of second meeting of creditors (seven to fourteen days after examination) (p. 29).
Offer of composition (if any) (ss. 134, 135, and 136 ; *post*, p. 62).

[1] The object of the examination of the bankrupt's family, etc., is to trace property which the bankrupt may have concealed, and a petition for a warrant to examine them as to collateral matters, simply on the ground that these may affect the pecuniary value of certain items of the bankrupt's estate, has been refused (Jack's Trs. *v.* Jack's Tr., 1910 S.C. 34).

4. Notice to Creditors (s. 83) (all who have claimed or are mentioned in the bankrupt's state of affairs) [1] stating [2] :—

Names of trustee and commissioners.
Day, hour, and place of examination.
Date of second meeting of creditors (p. 29).
Offer of composition (if any) (ss. 134, 135, and 136 ; *post*, p. 62).
Last date for lodging claims for first dividend.

Copy sent to Accountant (s. 80).

5. Warrant of Apprehension (if necessary).[3]

(1) *Bankrupt.*

(*a*) *When in Scotland* (s. 84).
Sheriff grants warrant.

(*b*) *When in Great Britain and Ireland other than Scotland* (s. 85).
Lord Ordinary grants warrant.
On petition by trustee.

(2) *Bankrupt's wife and family, clerks, and servants* (s. 86).

On application by trustee, Sheriff grants warrant requiring their appearance.

When they refuse or neglect to appear on summons, *Sheriff grants warrant* of apprehension, and, where necessary, requests Bankruptcy Court in England or Ireland to aid in carrying out order (E.B.A. 1883, s. 118).

[1] It is the trustee's duty to compel the bankrupt to furnish the necessary information, and in a case where he had not done so, a creditor who had not lodged his claim, and had received no notice, was held entitled to secure by interdict his share of the dividend (Scobie *v.* Hill's Trs., 1869, 8 M. 161); but where there is no fault on the part of the bankrupt or trustee and the delay in lodging the claim is due to the creditor's own remissness, the latter is not entitled to interdict (Hodge *v.* Wishart, 1912 S.C. 1012).

[2] It is usual to state also *the date of the first deliverance*, this being the date of commencement of the sequestration. Claims fall to be made up as at this date, and diligences during the sixty days prior thereto are cut down.

[3] If the bankrupt be in prison or custody, the Lord Ordinary or the Sheriff, as the case may be, may grant warrant for delivery of bankrupt for examination upon acknowledgment for his person (ss. 84 and 85).

(3) *Bankrupt's factor, law agent, and others who can give information relative to his estate* (s. 86).

Same procedure as above (2).

Except that—

Eight days (from first warrant) allowed to them to appear.

Unless—

Trustee upon oath specifies reasonable belief that they intend to *abscond*.

6. EXAMINATION [1]—

(1) *Bankrupt—*

(*a*) *Before Sheriff* (ss. 88 and 89).
Upon *oath or affirmation*.
In *open Court* (if trustee makes application to that effect) or *privately*.
Deposition written by Sheriff or by a clerk or shorthand writer (7 Edw. 7, c. 51, Schedule I., s. 65).
Copied into *Sederunt Book*.
Signed by bankrupt and Sheriff.

Interrogators—

(*a*) Trustee, (*b*) Sheriff, or (*c*) Creditor (with sanction of Sheriff).

At close of examination (s. 91).

(1) Bankrupt may correct his *state of affairs*.
(2) Revised state *signed* by the Sheriff and bankrupt.
(3) *Statutory oath* administered.
Signed by Sheriff and bankrupt.
Engrossed in Sederunt Book.

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[1] If the bankrupt (or other person to be examined) refuses to be sworn, to answer, or refuses to sign his examination or produce books, etc., he may be committed to prison on Sheriff's warrant (subject to his right to apply to Lord Ordinary for recall of warrant) (ss. 87 and 89).

If a latent partner omit to notify the trustee that he is a partner he will not be entitled to the benefits of the Act, unless he shows that such omission arose from innocent mistake, ignorance, or reasonable misconception, and unless he proceeds to remedy the loss and inconvenience thence arising (s. 90).

(*b*) *On Commission* (s. 84).

Where the bankrupt—

(1) cannot be brought from gaol or cannot be examined by Sheriff there ;
(2) is prevented attending by lawful cause ;
(3) is in custody on criminal charge ; or
(4) is abroad.

Sheriff may grant commission to

(1) Clerk of Court or acting Depute ; or
(2) Law practitioner of three years' standing ; or
(3) Justice of Peace or other magistrate.

At close of examination (s. 91).

(1) Bankrupt may correct his *state of affairs*.
(2) Revised state *signed* by the Sheriff and bankrupt.
(3) *Statutory oath* administered.

Signed by commissioner and bankrupt.
Engrossed in Sederunt Book.

(2) *Bankrupt's Family, etc.* (s. 86).[1]

Before Sheriff or *on commission* (if in Scotland).

If in United Kingdom other than Scotland, Sheriff will grant order for examination and request Bankruptcy Court in England or Ireland to aid in carrying out order. [E.B.A. 1883, s. 118.]

Allowance as witnesses paid.

Production of documents, etc. (s. 87).

Sheriff may order production of documents for inspection, but they must be returned by the trustee.

NOTE.—The Sheriff or Commissioner may adjourn examination of either bankrupt or his family, etc., for brief interval if necessary, but may re-examine as often as required (ss. 84 and 86).

7. LINES OF EXAMINATION (A. of C. Notes, s. 4).

The examination ought to disclose whether and how far the bankruptcy is due to (*a*) *Innocent* misfortunes or losses in business, or (*b*) *Culpable* conduct.

A *Deficiency Statement* should be prepared to make this clear, or if bankrupt has kept *no books*, this fact should be clearly brought out.

[1] The evidence of these parties is usually certified by the shorthand writer, but the Sheriff may request them to sign their deposition.

Previous explanations made by the bankrupt to the trustee personally may obviate the necessity of certain questions at the public examination, but such should be *minuted.*

Fraud on the part of the bankrupt ought to be clearly brought out in view of (*a*) the reduction of preferences, or (*b*) the trustee's report on bankrupt's conduct, or (*c*) possible criminal prosecution (see s. 178).

Questions would be framed to elicit the following information :—

(1) Date commenced business ?
(2) Original capital and additions thereto ?
(3) Causes of insolvency and period thereof ?
(4) What books kept (particularly cash books) ? Balance sheets prepared ? Whether all produced or not ?
(5) Any loans from bank or on accommodation bills or otherwise, and security given therefor ?
(6) Any gratuitous alienations or fraudulent preferences ?
(7) Any liability under partnership agreements or cautionary obligations ?
(8) Any *spes successionis ?*
(9) What sums drawn for family and personal expenses annually ?

ALLOWANCE TO BANKRUPT(S).

(Section 74.)

Allowance from date of Sequestration until second dividend only [1]—

Resolution. { At meeting for election of trustee, or
At second statutory meeting, or
At meeting specially called for the purpose.

Majority. Four-fifths in value of creditors present.

Amount. Not more than £3, 3s. per week per individual.

Condition. Bankrupt must have complied with provisions of Act.

Further Allowance [2]—

Resolution. At a regular meeting called by the trustee.

Majority. Simple majority in value.

Approval of Accountant obtained.

Application by trustee to Lord Ordinary or Sheriff to award.

[1] *I.e.* for ten months from date of deliverance actually awarding sequestration.

[2] Either as to amount or duration of payment.

PROCEEDINGS IN CASE OF A DECEASED DEBTOR.[1]

(Section 83.)

Trustee fixes date of second meeting.[2]
Gazette notice within fourteen days previous to meeting.[3]
Notice to creditors. (Copy to Accountant.)

[1] The estate of a deceased person may be wound up by a judicial factor under section 163. Insolvency is not a necessary element, nor is the section restricted to cases of intestacy. The procedure is regulated by the Codifying Act of Sederunt, Book G, ch. ii. (see p. 211), and is as follows :—

PETITION.

By (1) A creditor (no qualification) ; or
(2) Any person interested in the succession, if there are no trustees appointed or none acting.

To (1) Either Division of Court of Session ; or
(2) Where estimated assets do not exceed £500, to Sheriff of sheriffdom in which deceased resided or carried on business during year preceding date of petition, or within which his heritage is situated.

Form as per Schedule I. to ch. xi., Book G, of Codifying Act of Sederunt.

Intimation (s. 2).
On Walls and in Minute Book (certificates to be produced).
In *Edinburgh Gazette* (*ibid.* Schedule II.) (copy to be produced).
Full copy of petition to deceased's representatives named in petition (evidence of service to be produced).

APPOINTMENT (s. 3).
On lapse of fourteen days (or such other time as Court may fix) from above intimation.

NOTICE FOR CLAIMS (s. 4).
In *Edinburgh Gazette* within eight days of extract appointment and similar notice in such newspapers as factor deems proper (s. 9).

ADJUDICATION ON CLAIMS (s. 5).
Factor examines claims, and may call for further evidence or require creditor to raise an action to constitute his debt.

INVENTORY (s. 6).
Lodged with Accountant within six months of extract of appointment.
Accompanied by
(*a*) all documents of importance in his hands, and

[2] There is no statutory limit within which the next meeting of the creditors of a deceased bankrupt must be held, but the practice is to issue the notices of the meeting as shortly after confirmation of the trustee as possible (s. 83).

[3] Periods under the Act are reckoned exclusive of the day from which they run (s. 3).

States { Names of trustee and commissioners.
Date of meeting.
Last date for lodging claims.

At meeting. Procedure as in case of second statutory meeting (see below).

SECOND STATUTORY MEETING.

(Section 83.)

Held seven to fourteen days after bankrupt's examination.

Report by trustee with *state of affairs* and *estimate* of dividend submitted (s. 92).

(*b*) state of debts due by deceased, distinguishing ordinary creditors and parties claiming in the succession of deceased.

Creditors and parties interested have a right of access to these in hands of Accountant.

SCHEME OF DIVISION (s. 7).

(*a*) State of funds and scheme of division laid before Accountant with all relative documents.

(*b*) Report by Accountant thereon.

(*c*) State and report lodged in Court.

(*d*) Notice by post to claimants stating—

(*a*) State, etc., lodged in Court;

(*b*) Amount of ranking and payment about to be made to the claimant; or

(*c*) Claim rejected.

Notice by post to any known creditors who have not claimed stating that no dividend has been allotted to them.

(*e*) Notice in *Edinburgh Gazette* in prescribed form (Schedule IV.).

OBJECTIONS (ss. 9 and 10).

Creditors and parties interested may examine state and scheme lodged in Court, and lodge note of objections *within three weeks* of date of above notices.

Court thereafter disposes of objections after full investigation.

PAYMENT OF DIVIDEND (s. 11).

Scheme of division approved of by Court. Payment made by factor in terms thereof.

The factor may pay out of the first of the funds, and without waiting for lapse of six months, deathbed and funeral expenses, rent, taxes, privileged wages, and interest becoming due or past due to creditors who have a preference over the estate (s. 13).

The ranking is according to sequestration rules (B.A. s. 163), but the appointment of a factor under section 163 has no effect in cutting down preferences or equalising diligence.

On the lapse of six months a partial division may be approved by the Court, but sufficient must be retained to pay the dividend on all claims not yet admitted, or future or contingent, and also the full amount of debts claimed as preferable but not yet admitted to preference (s. 12).

The trustee may be instructed at this or future meetings as to recovery and disposal of the estate, or as to management of business if creditors decide to carry it on. Where there is heritable property the creditors may determine whether such is to be sold by judicial sale, voluntary public sale, or private sale (see p. 36). It is competent also to approve or entertain an offer of composition at this meeting (see p. 66 ; ss. 78 and 92).

MEETINGS—GENERAL PROVISIONS.[1]

(Section 93.)

CALLED (*a*) BY TRUSTEE—

1. Of his own accord ; or
2. On requisition by one-fourth in value of creditors ; or
3. On requisition by Accountant (s. 159).

or (*b*) *by any commissioner* after notice to trustee.

or (*c*) *by order of Lord Ordinary or Sheriff* in cases stated in ss. 71 and 165.

NOTICE IN EDINBURGH GAZETTE (s. 94).

Seven days prior to meeting.[2]

Stating day, hour, place, and business.

NOTICE TO CREDITORS.

In certain cases, including—

1. Second statutory meeting (s. 83).
2. Meeting to *accept* offer of composition (s. 134).
3. Meeting to authorise sale of whole estate (s. 133).
4. Meeting prior to trustee's discharge (s. 152).

Exceptions—

(1) Creditor for an amount under £20 has no right to notice unless he intimates desire for same to trustee in writing (s. 95).[3]

(2) Any creditor may direct that no notice be sent (*ibid.*).

Copies of all notices must be sent to Accountant (s. 80).

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[1] Where a statutory meeting has inadvertently not been held at the time appointed, the Court will, on petition, appoint another date for such meeting (Wilson, Pet., 1891, 19 R. 219).

[2] Periods under the Act are reckoned exclusive of the day from which they run (s. 3).

[3] But see footnote, p. 63. Notice of offer of composition must apparently be sent to every creditor without exception.

PRESES—
Elected by majority of creditors present. Signs minutes.

QUORUM—
None fixed by statute. One creditor may apparently constitute a meeting.

ADJOURNMENT—
Only until following day (s. 94).
Except—
First statutory meeting, in which case adjournment may be made for a reasonable time within the statutory limit; *vide* p. 17, note 4 (s. 64).

MINUTES—
Should be *written* at the meeting (see s. 64).
Must be *signed* by Preses either at meeting or subsequently.

APPEALS AGAINST RESOLUTIONS [1] (ss. 165, 166, and 167).
Note of Appeal—
To Lord Ordinary or Sheriff within fourteen days.
Marked by Clerk of Bill Chamber or Sheriff-Clerk.
States resolution complained of and cause.
Service of appeal and deliverance—
Upon creditors who have voted for resolution, and also upon bankrupt and trustee (where their interests are affected).
Record made up (if necessary).
Judgment of Lord Ordinary or Sheriff subject to appeal.

VOTING RULES.

OATH AND GROUNDS OF DEBT must be lodged [2] (s. 45), *ante*, p. 18, and if a mandatory claims to vote he must exhibit his *mandate* [3] (s. 59). *Contingent claims* and annuities must be valued (see p. 42). The oath should specify any *securities* held and any *co-obligants* for the debt. In the case of securities over the bankrupt's estate, and also in the case of collateral securities or claims against co-obligants in respect of which the bankrupt has a *right of relief*, the *value* thereof must also be stated (ss. 45 and 21). *Preferable creditors* are entitled to vote for full amount

[1] The same procedure applies in appeals against deliverances of trustee or commissioners, subject to any statutory provisions applicable to special cases (s. 165, and see s. 124).

[2] Petitioning creditor's oath may be used for voting. See note 2, p. 41.

[3] Neither the trustee not a partner with the trustee should be a mandatory (Maxwell Witham *v.* Teenan's Tr., 1884, 11 R. 776). A mandatory may vote although the creditor is present (Tough's Sequestration, 1915, 31 S.C.R. 234).

of their claims (Low *v.* Baxter, 1851, 13 D. 1349).[1] As to objections to claims, see p. 40.

MAJORITIES (s. 96).

Computed in *value* unless statute provides otherwise.
Debts under £20 are not reckoned in a "majority in number."
Contingent claims which are not valued or are incapable of valuation are not reckoned, nor postponed claims.

SPECIAL DEDUCTIONS FOR VOTING (ss. 55 to 57).

In addition to the usual deductions for *ranking* stated on p. 40, a creditor claiming to *vote* must in his oath value and deduct from his claim *collateral* securities [2] or obligations in respect of which the bankrupt has a *right of relief;* thus :—

A. The value of the *creditor's claim* against a co-obligant bound with the bankrupt must be deducted *to the extent to which the bankrupt is entitled to relief against such co-obligant.*[3]

Example 1. (*Right of Total Relief.*)
A. is cautioner in respect of £1 lent to C. by B. The estimated dividends from the sequestrated estates of A. and C. are respectively 10s. and 15s. per £. B. votes on A.'s estate for 5s., and on C.'s estate for £1.

Example 2. (*Right of Partial Relief.*)
B. lends A. and C. £1, and receives their acceptance for that amount. The money is shared : A. 16s., C. 4s. Assume dividends as before.
B. votes on A.'s estate for 16s.

Thus :—

Amount of claim	£1	0	0
Less Dividend from C., 15s. to extent of right of relief	0	4	0
	£0	16	0

[1] When an oath bears that the creditor holds a co-obligant bound, but does not state that latter is liable in relief, it is for any party maintaining the right of relief to prove his allegation (Tait's Sequestration, 1913, 29 S.C.R. 96).

[2] A security on subjects outwith the bankrupt's estate is termed a collateral security, but a collateral security does not necessarily require to be deducted unless the circumstances fall within the rules (2) or (3) *infra.*

[3] Distinguish between a co-obligant liable in relief and a cautioner. Thus, the principal debtor is a co-obligant with the cautioner but *has not* a right of relief, whereas the cautioner is also a co-obligant with the principal debtor, but *has* a right of relief.

And on C.'s estate for 10s.

Thus :—

Amount of claim	£1	0	0
Less Dividend from A. which is within the amount of C.'s right of relief .	0	10	0
	£0	10	0

B. The value of any *security held by the creditor* from a co-obligant bound with the bankrupt must be deducted *to the extent to which the bankrupt is entitled to relief thereout.*

Example 1. (*Right of Total Relief.*)

Assume in Example 1 above that C. has given a security to B. worth 10s.

B. votes upon A.'s estate for 2s. 6d.

Thus :—

Amount of claim	£1	0	0
Less collateral security 10s., and *less* also 15s. per £ on remaining 10s. =7s. 6d.	0	17	6
	£0	2	6

B. votes on C.'s estate for 10s.

Thus :—

Amount of claim	£1	0	0
Less security over part of C.'s estate .	0	10	0
	£0	10	0

Example 2. (*Right of Partial Relief.*)

Assume in Example 2 above that C. has given a security to B. worth 10s.

B. votes on A.'s estate for 16s.

Thus :—

Amount of claim	£1	0	0
Less collateral security to extent of A.'s right of relief. . . .	0	4	0
	£0	16	0

B. votes on C.'s estate for nil.

Thus :—

Amount of claim	£1	0	0
Less security, 10s., and *less* also dividend from A.'s estate which is within C.'s right of relief against A., 10s.	1	0	0
	£0	0	0

C. The value of any *security held by the creditor, out of which the bankrupt is entitled to relief, must be deducted to the extent of such relief.*

Example—

A. borrows from B. on security of property assigned the sum of £1. Subsequently A. sells the property to C. subject to the loan, but C. does not become personally bound to B., undertaking merely to relieve A. when B. calls up the loan. Assume A. and C. bankrupt—dividends as before—and that property is now valued by creditor at 15s.

B. votes on A.'s estate for 5s.

Thus :—

Amount of claim	£1 0 0
Less the value of security . .	0 15 0
	£0 5 0

NOTE.—As C. is not an obligant bound with A. to B. deduction could not have been enforced under heads (1) and (2) above.

A PARTNERSHIP creditor when voting on the partnership estate is not bound to deduct the value of the partners' private estates, but *when voting on the partners' estates* he must

(*a*) take his claim on the *partnership estate*, value it, and deduct such value ; and

(*b*) take his claim on *each co-partner's estate*, value it, and deduct such *value* in so far as the co-partner is liable to relieve the bankrupt [1] (s. 57).

Example 1.

B., a creditor of A. C. & Co. in the sum of £1, claims to vote on the individual estates of A. and C. Firm's estate valued at 5s., A.'s 10s., and C.'s 15s. per £.

[1] *I.e.* "the estimated dividend which will correspond with the respective liabilities of each of the other partners if they be bankrupt, or the full amount of their proportions if they be solvent" (Goudy, 4th ed., p. 190). Partners are liable in relief to each other as cautioners for the firm's debt ; *vide* pp. 86 to 88. For a very full discussion of the effect of section 57, see article by author and J. Tullis Cochran, solicitor, Glasgow : "The Claims of Partnership Creditors on the Estates of the Individual Partners," in *Accountant's Magazine*, 1913, p. 266.

(1) B. votes on A.'s estate for 7s. 6d.

Thus :—

Amount of claim	£1	0	0
Less 5s. per £ thereon payable by firm	0	5	0
	£0	15	0
Less dividend from C., 15s. per £ on 15s. to extent of right of relief .	0	7	6
	£0	7	6

(2) B. votes on C.'s estate for 7s. 6d.

Thus :—

Amount of claim	£1	0	0
Less 5s. per £ thereon payable by firm	0	5	0
	£0	15	0
Less dividend from A., 10s. per £ on 15s.	0	7	6
	£0	7	6

Example 2.

Assume in the last-mentioned case that there is a third partner, D., whose estate shows a dividend of 4s. per £.

(1) B. would vote on A.'s estate for 6s.

Thus :—

Amount of claim	£1	0	0
Less 5s. per £ payable by firm, 5s. ; 4s. per £ on 15s. payable by D., 3s ; 15s. per £ on 15s. (to the extent of 6s.) payable by C., being the latter's equal share of the balance with A. .	0	14	0
	£0	6	0

(2) B. would vote on C.'s estate for 6s.

Thus :—

Amount of claim	£1	0	0
Less 5s. per £ payable by firm, 5s. ; 4s. per £ on 15s., 3s. ; 10s. per £ on 15s. payable by A. to the extent of 6s. (being the latter's equal share with C. of the remaining balance of the debt)	0	14	0
	£0	6	0

(3) B. would vote on D.'s estate for 5s.

Thus :—

Amount of claim	£1	0	0
Less 5s. per £ payable by firm, 5s.; 10s. per £ on 15s., payable by A. to the extent of 5s. (his equal share of the debt); 15s. per £ on 15s., payable by C. to extent of 5s. (being C.'s equal share of the debt) . .	0	15	0
	£0	5	0

PURCHASE OF CREDITORS' SECURITIES OR COLLATERAL CLAIMS WHEN VALUED FOR VOTING PURPOSES (s. 58).

1. *Within two months* after oath used for *voting*, or in assenting to or dissenting from the bankrupt's composition or discharge, the trustee, with consent of commissioners, may demand a conveyance at expense of estate on payment of the specified value and 20 per cent. additional.
2. *At any meeting* a resolution of a *majority in value* of creditors present (excluding the secured creditor) may in like manner demand a conveyance at the expense of the estate.

NOTE.—The creditor cannot revalue his security until the *lapse of twenty-one days* from the date on which the vote has been exercised, but after that he may revalue any time prior to being called upon to convey. Payment must be tendered in exchange for conveyance (see p. 42).

SALE OF HERITABLE ESTATE.

A. JUDICIAL SALE [1] (ss. 92 and 110).

Resolution by creditors at a meeting called for the purpose (subject to conditions below, **B,** 1).
Trustee institutes action in Court of Session (Inner House).
Cites all heritable creditors in and out of Scotland.
Obtains decree of sale of whole heritable estate.
Purchaser receives *discharge,* and by effect of decree is *completely exonered.*

[1] This method of sale is seldom adopted, but may be of advantage where the titles to the estate are complicated (Cannon's Trs. *v.* Lake, 1883, 21 S.L.R. 101; see Bell's *Com.*, ii. 233).

B. Public Voluntary Sale—

Trustee with consent of commissioners—

Fixes upset price, etc.

Grants disposition to purchaser [1] (s. 100).

Provisions where there are heritable creditors—

1. *Trustee* may sell *alone* if authorised by a resolution of the second statutory meeting of creditors or other meeting called for the purpose (s. 110).
   - Where heritable creditor *has not commenced or has unduly delayed proceedings.*
   - Upset price must cover *debt of heritable creditor* (*principal, interest, and expenses*).
2. *Heritable creditor* may sell *alone* (ss. 103 and 108).
   - Provided (*a*) his security is *preferable* to the right of the trustee; (*b*) he proceeds *timeously.*
   - Implied conditions—
     Proper season, regular manner, and *full price.*
   - Heritable creditor must account *to trustee* for any *reversion* of price.
3. Trustee *may concur* in sale by heritable creditor.
4. *Trustee may sell with concurrence of heritable creditors* (s. 109).
   - *Articles of roup and conveyance* are executed by *trustee* in his own name, with consent of the *creditors* and *commissioners.*
   - Purchaser must *pay price direct to parties entitled thereto:* or, where that is impracticable, he must consign price in the bank where the sequestration funds are lodged.
   - *Receipts* for payment and the *conveyance* = full and free title.

C. Sale by Private Bargain (s. 111).

Requisites—

(*a*) Concurrence of *majority in number and value of whole creditors of bankrupt* (*at meeting called for the purpose*).[2]

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[1] By the act and warrant, a personal right to the bankrupt's feudal estate is vested in the trustee, who can therefore grant effectual conveyances without making up title in his person (s. 100).

[2] The concurrence of the Accountant is conclusive evidence that the concurrence of the requisite majority of creditors has been obtained (s. 111). Where the requisite majority cannot be got to attend a meeting, the Accountant seems to sanction the application to creditors not present for consents to augment the votes to the necessary number.

(*b*) Concurrence of *heritable creditor*(*s*).

(*c*) Concurrence of *Accountant of Court.*

NOTE.—The Accountant requires the following productions (A. of C. Notes, No. XVI.):—

1. *Missives of sale* showing terms and conditions.
2. *Valuation* of subjects, or other satisfactory evidence of value.
3. *Minutes or other evidence that creditors and commissioners* have approved of sale.
4. *List of creditors*, with amount of their claims, showing those who have concurred, and *certificate by trustee* that list is complete and correct, and requisite concurrence of creditors has been obtained.

The Accountant grants an order approving of sale, but does not become a party to the disposition (A. of C. Notes, No. XVI.).

D. SALE AFTER LAPSE OF TWELVE MONTHS FROM AWARD OF SEQUESTRATION (see p. 50).

SCHEME OF RANKING AND DIVISION (ss. 112 and 113).

Prepared by trustee in cases where there are heritable creditors.
Reported to Lord Ordinary or Sheriff.
Judgment is a warrant for payment of price.

NOTE.—The Lord Ordinary or Sheriff, on application by trustee or a creditor with a report by the Accountant, may authorise payment of preferable claims or an interim scheme of division (s. 113).

PURCHASER—

Any one *except* the trustee or a commissioner, or any law agent employed by the trustee in connection with the sequestration, or any partner of such law agent (s. 116).

LODGMENT OF CLAIMS FOR DIVIDEND.[1]

TIME LIMIT—

Two months before time for payment of any dividend (ss. 119 and 129).

Exception—One month when dividend has been accelerated (*ibid.*).

[1] With consent of commissioners, the trustee may dispense with necessity for lodging claims relative to preferable debts and pay such forthwith (s. 118 (3)).

Provided—

(*a*) If claim lodged too late for any one dividend but in time for any subsequent one, the creditor is entitled to an equalising dividend out of the first of the fund to put him upon an equal footing with the other creditors as regards previous dividends [1] (*ibid.*).

(*b*) In case of *creditor resident abroad* at date of award of sequestration or at any time within five months thereafter, if his claim is lodged fourteen days prior to date of payment of the dividend, it entitles him to have a *sum set apart* by trustee equal to the dividend on his claim, which sum shall be added to divisible fund for next dividend, out of which he will receive an equalising dividend (s. 120).

(*c*) If any creditor is not in possession of the accounts and vouchers of debt previously to the assigned period for lodging claims, he may have a dividend *set apart* till a reasonable time be afforded for establishing his debt, but he *cannot vote* (s. 46).

Documents constituting the claim must be *initialled* by the trustee and *noted* in the Sederunt Book with *date* of production (see p. 51 ; B.A. ss. 45, 46, and 21).

1. *Oath of verity by creditor* states—

(*a*) Any securities held and any claims against co-obligants.

(*b*) Value of securities [2] *over bankrupt's estate.*

(*c*) Amount of claim after deducting any trade discount applicable, adding or deducting interest applicable (*e.g.* in case of bills of exchange) and deducting value of securities over bankrupt's estate (ss. 48 and 61).

(*d*) Cause of non-production of vouchers (where vouchers cannot be produced) (*ibid.* s. 46).

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[1] But where the "first" is a "final" dividend a creditor failing to lodge his claim timeously cannot interdict the trustee from dividing the estate (Hodge *v.* Wishart, 1912, 6 S.C. 1012).

[2] Or, if *required by the trustee, each* security (s. 61). The mere valuation and deduction of the security does not bind the creditor to retain it and *fulfil the obligations* attaching to it, and the debtor is bound, if called upon, to accept a reconveyance (Clydesdale Bank, Ltd. *v.* M'Intyre, 1909, 46 S.L.R. 969).

2. *Statement of account.*
3. *Vouchers of debt* (if any). These are returnable to the creditor if required (s. 46).

   E.g. Bill of exchange, bond, lease, agreement and such like.

NOTE.—A landlord must produce lease even though expired and tenant possesses by tacit relocation (Menzies *v.* Duff, 1851, 13 D. 1044 ; Williamson's Sequestration, 1912, 28 S.C.R. 244). A bank's claim for an overdraft requires to be vouched by bills or cheques, if not verified in terms of the Banker's Books Evidence Act, 1879 (Warden's Sequestration, 1908, 24 S.C.R. 301 ; Maitland's Sequestration, 1912, 28 S.C.R. 354).

DEDUCTIONS FROM CLAIMS—

1. Payments received to account *prior to date of sequestration* from either principal debtor or co-obligant (s. 117).
2. *Interest* on bills of exchange (or other debts subject to interest) not yet due. If overdue, interest falls to be added (s. 48).
3. Any *discount* beyond the legal interest to which the claim is liable by usage of trade, or by contract, or course of dealing between parties (s. 48).
4. The value of any *security* over *property which is part of the bankrupt's estate* [1] but *not* collateral security (s. 61) (as to voting deductions see p. 32 ; *cf.* also Common Law Rule, p. 99).[2] As to various kinds of securities, see pp. 75 to 83.
5. *Contra accounts*, if parties are debtor and creditor in the same right and there is proper concourse of debit and credit prior to date of sequestration (see p. 79).

OBJECTIONS TO CLAIMS.[3]

1. *Failure to make legal deductions* (see above).
2. *Prescription of debt.* The lapse of time may have the effect of extinguishing the claim or limiting the method of proof thereof. The principal prescriptions (or limitations)

[1] Where subsequent to the bonding of a property the reversion was conveyed by the bankrupt to a third party *ex facie* absolutely but really in security or in trust, it was held that the bondholder must value and deduct the subjects as property belonging to the bankrupt (Tough's Sequestration, 31 S.C.R. 234).

[2] It may be unnecessary to require a *preferable* creditor to deduct the value of a security held by him (Brown *v.* Blaikie, 1849, 11 D. 474), but if there is insufficient to pay preferable creditors in full it seems consistent with the statute and only fair that such deductions should be made.

[3] As to objections to claims lodged for purposes of voting in election of trustee see p. 19, note.

under Scots law are given in footnote.[1] On an account current the prescriptive period runs from the date of the last debit entry therein. The presenting of or concurring in a petition for sequestration or the lodging of a claim in a sequestration interrupts prescription of the debt (s. 105).

3. *Illegality of debt ; e.g.* a debt due under a *gambling transaction* is not enforceable at law as between principals, and therefore does not constitute a valid claim in bankruptcy. But where the contract of agency intervenes (as in the case of a stockbroker), the agent has a valid claim (Harris *v.* Roxburgh, in Sheriff Court, Dumbarton, rep. *Glasgow Herald*, 20th April, 1907).

4. *Invalidity of document of debt ; e.g.* omission of date, stamp, signature, witnesses, etc., where such are necessary.

5. *Invalidity of Oath.*[2]

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[1] 1. *Long Prescription.—Forty years* (Bell's *Prin.*, 605).
Applies to mutual contracts of all kinds. It may be interrupted by fresh acknowledgment of debt during period.

2. *Vicennial Prescription.*—Twenty years (Bell's *Prin.*, 590).
Applies to all *holograph* writs upon which an obligation may be founded. It may be interrupted by action or diligence upon the document, and may be elided by oath of the debtor (prior to sequestration) (Adam *v.* M'Lauchlan, 1847, 9 D. 560).

3. *Decennial Prescription.*—Ten years (Bell's *Prin.*, 635).
Applies to claims by minors against tutors or curators and *vice versa*. It cancels the claim.

4. *Septennial Prescription.*—Seven years (Bell's *Prin.*, 600).
Applies to cautionary obligations and *cancels* same (except cautionary obligations for judicial officers).

5. *Sexennial Prescription.*—Six years (Bell's *Prin.*, 594).
Applies to bills of exchange. It limits proof to writ (other than bill) or oath (prior to sequestration) of debtor (Adam *v.* M'Lauchlan, *supra*). A prescribed bill is not a good *voucher* for a claim (Brand *v.* Allan, 1913, 29 S.C.R. 76).

6. *Quinquennial Prescription.*—Five years (Bell's *Prin.*, 593).
Applies (*inter alia*) to mutual contracts concerning moveables or money which do not require and are not constituted in writing, and are provable by witnesses. It limits proof to writ or oath (prior to sequestration) of debtor (Adam *v.* M'Lauchlan, *supra*).

7. *Triennial Prescription.*—Three years (Bell's *Prin.*, 628).
Applies to house rents, merchants' accounts, servants' wages, etc. Proof is limited, as above, to writ or oath of the debtor.

[2] The fact that the petitioning creditor's oath does not refer to his debt as "at the date of the sequestration" does not appear to be sufficiently

6. *Non-existence* of any legal debt or *pre-discharge* of the debt.

7. *Double ranking.*—If the creditor has ranked and drawn the full dividend from the principal debtor's estate, a co-obligant for the debt who pays him the *deficiency* cannot rank also. The co-obligant may, however, pay the debt *in full* and rank on the principal debtor's estate in place of the creditor, and for this purpose may demand at his own expense an assignation of the debt (s. 52).

8. *Gratuitous alienation during insolvency* (see p. 8).

Valuation of Contingent Claims and Annuities [1] (ss. 49 and 50).

Application to Sheriff (if trustee not yet elected) or to trustee to put a value thereon.

Notice to bankrupt and petitioning or concurring creditors in sequestration where application is to the Sheriff.

Judgment of Sheriff or trustee is subject to appeal by any creditor (ss. 49, 50, and 165).

Creditor can vote and rank in respect of such value only.[2]

Purchase by Trustee of Creditors' Securities [3] (s. 61).

When a security is valued for purpose of ranking for a dividend, the trustee, with consent of commissioners, may demand a conveyance at the expense of the estate, provided the demand is made timeously and payment (to be made in exchange for the conveyance) is at once tendered (s. 61; Maclachlan *v.* Maxwell, 1910 S.C. 87).

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serious to uphold an objection to its being used subsequently for voting (Millar *v.* Romanes, 1912, 2 S.L.T. 269).

[1] The valuation of the annuity also fixes the liability of the cautioner (if any) to the creditor, and the cautioner on paying the value so placed on the annuity may himself lodge a claim on the debtor's estate (s. 51).

[2] In the case of a contingent claim which cannot be valued the claimant can neither vote nor rank (Matthew *v.* Matthew's Tr., 1907 (O.H.), 15 S.L.T. 326).

[3] A creditor may *revalue* his security, but not after being called upon to convey same to the trustee (*cf.* s. 58). If a *co-obligant* with or *cautioner* for the bankrupt is liable to the creditors and holds a security over part of the bankrupt's estate, he must account for it to the trustee as if he were ranking in place of the creditor (s. 61).

ADJUDICATION ON CLAIMS.[1]

(Section 123.)

On expiry of four months from award of sequestration, the first adjudication on claims may take place.

Oaths and Grounds of Debt examined by trustee *within fourteen days.*

Examination of Parties (s. 123).

Bankrupt, creditor, and others may be examined upon oath by the trustee where necessary.

And a warrant may be got from Sheriff to compel their attendance.

Deliverance on Claims by Trustee (s. 123).

1. *Admitting* in whole or in part; absolutely or conditionally; or
2. *Rejecting* in whole or in part, and stating grounds of rejection; or
3. *Calling for further evidence.*

Must be in writing, dated and signed by trustee, and explicit in terms.

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[1] The trustee may, *at any time* after a claim has been lodged, require further evidence and examine the bankrupt, any creditor, or any other party on oath anent same, but he ought not to adjudicate upon the claims *unless there is a fund sufficient to pay a dividend* (s. 123; A. of C. Notes, s. 8; Monkhouse *v.* M'Kinnon, 1881, 8 R. 454). As to postponement of period for paying first dividend, see *post*, p. 49. A creditor cannot constitute his debt by action after sequestration. The claim must be dealt with under the Bankruptcy Act (Martin's Trs., 1904 (O.H.), 12 S.L.T. 112), but if the creditor's action was raised prior to sequestration he is entitled to proceed (Anderson, 1895 (O.H.), 2 S.L.T. 503).

It is the duty of the trustee, when the oath of a creditor is not framed in the manner required by law (*e.g. in re* deduction of securities), to call upon creditor to rectify same, and where this has not been done the creditor may be entitled to rectify his claim even after the adjudication (Ritchie's Trs. *v.* M'Call's Tr., 1904, 6 F. 883), and where a creditor claims only an ordinary ranking when he should have claimed a preference (*e.g.* wages), the trustee should return the claim to be rectified (Crerar *v.* Clements, jun., 7 F. 939) (s. 47).

The trustee may, with the consent of the commissioners, compromise or refer to arbitration any questions arising or any claim against the estate (s. 172). The consent of the commissioners is not necessary in general acts of management of the trustee. Thus the consent of a trustee to the discharge of a co-cautioner with the bankrupt was held to be an act of management which did not require the concurrence of the commissioners (Hamilton's Exr. *v.* Bank of Scotland, 1913 S.C. 743).

A deliverance issued cannot be recalled, but the claims are open to adjudication for each separate dividend (ss. 119 and 129). It is not a competent deliverance to reject and at same time call for further evidence.

CLASSIFIED LISTS (s. 123).

1. *Claims admitted*, specifying name, amount, interest, and whether preferable, ordinary, or contingent ranking.
2. *Claims rejected*, specifying name and amount.

NOTICE TO CREDITORS, as set forth on p. 47.

APPEALS[1] AGAINST ADJUDICATION (s. 124; see also s. 165).

To Lord Ordinary or Sheriff.

Within fourteen days from *Gazette* notice of dividend. (See p. 47.)

By any creditor.

NOTE.—The bankrupt cannot appeal under s. 124, but may do so under s. 165 "within fourteen days from the date of the *deliverance*."

In form of short written note.

Lodged, and marked by Bill Chamber or Sheriff-Clerk.

If appeal not lodged, the trustee's deliverance is conclusive as regards the dividend about to be paid, but a fresh claim may be lodged in reference to future dividends.

ORDER OF RANKING.

(Section 117.)

1. PREFERABLE CLAIMS.

Ranked according to *order of preference* to exclusion of other creditors; see *post*, p. 75, "Creditors' Preferences." With the consent of the commissioners the trustee may dispense with oaths and pay these debts forthwith (s. 118 (3)).

2. ORDINARY CLAIMS.

Ranked *pari passu* (with contingent claims) after preferable claims satisfied.

[1] Where the appeal is against the *admission* of a claim, the trustee, as representing the general body of creditors, has no interest to defend the deliverance, the creditor whose right is challenged being the proper defender. Where the appeal is against the *rejection* of a claim, the trustee is the proper defender. In any case, where the appellant is successful, no portion of the litigation expenses which may be incurred by the trustee can be deducted from the dividend falling to the appellant (Skinner's Tr. *v.* Keith, 1887, 14 R. 563; Adam & Kirk *v.* Tunnock's Tr., 1866, 5 M. 40).

3. Contingent Claims.[1]

Ranked *pari passu* with ordinary creditors for *value* of claim as fixed by trustee; see *ante*, p. 42 (s. 49).

If *claim* is not valued, a dividend on the amount of *debt* must be *set aside* in bank until the contingency is purified (s. 126). But the creditor cannot vote.

E.g. the contingent claim of the holder of a bill not yet due upon the sequestrated estate of a co-obligant if he can show that the principal debtor is verging on bankruptcy.[2]

4. Postponed Creditors.

Ranked upon any *surplus of the estate* after payment in full of other creditors.[3]

Examples—

(*a*) Lender of money to a partnership upon interest varying with the profits (Partnership Act, 1890, s. 3).

(*b*) Seller of goodwill to a partnership in consideration of a share in the profits (Partnership Act, 1890, s. 3).

(*c*) Married women for funds lent or entrusted to or immixed with husband's (Married Women's Property Act, 1881, s. 1 (4)) (see p. 72).[4]

[1] A tenant's liability for future rent is not a contingent debt in the sense of the statute (Strathdee *v.* Paterson, 1913, 1 S.L.T. 498).

[2] The estate of a bankrupt shareholder in a public company must admit to a ranking not only the shareholder's liability for calls in arrear, but also, where the company is being wound up, the estimated value of his liability to future calls (C.A., s. 127 (2); Mercantile Mutual Marine Insurance Association, 1883, 25 Ch. D. 415). While the company is a going concern it is difficult to see how the liability for future calls can be fairly estimated. The payment of a dividend in bankruptcy does not entitle the trustee to participate in a division of surplus assets. The estate must first discharge itself of the sum due in respect of calls (West Coast Gold Fields, Ltd., [1905] 1 Ch. 597).

[3] It is thought that the claim of postponed creditors will be preferred to the claim of ordinary creditors for interest under s. 48 (see Goudy, 4th ed., p. 331, and per L. J. James in Findlay, 1881, 17 Ch. D. 334).

[4] A married woman is, however, entitled to the benefit of any security received by her from her husband for the loan (Commercial Bank *v.* Wilson, 1909, 1 S.L.T. 273). Further, on the principle that a firm is a separate *persona* a loan *to a firm* in which the creditor's husband is only one of the partners is not a loan to her husband in the sense of the Act of 1881, and is *not postponed* in the ranking on the firm's estate (nor apparently on the husband's estate either, in respect of the deficiency). (Lumsden *v.* Sym, 1912, 28 S.C.R. 168; English case, *In re* Tuff, 1887, 19 Q.B.D. 88, referred to.) The form of the transaction will be important, viz. whether a loan to a husband leaving him free to lend the money to the firm, or a loan directly to the firm.

FIRST DIVIDEND.

ACCOUNTS made up immediately on expiry of four months from deliverance actually awarding sequestration [1] (s. 121; A. of C. Notes, No. VI., and App. II. thereof), viz. :—

(1) Account current or progressive state of intromissions showing *daily* balances on trustee's and also on bank account.

(2) State of whole estate showing—
(*a*) funds recovered; and
(*b*) property outstanding and cause of non-realisation.

COMMISSIONERS' MEETING (s. 121).

Held within fourteen days thereafter.

Agenda—

(*a*) Accounts to be audited by Commissioners.

Vouchers for payments examined. Particularly see that *law agent's accounts*, before payment thereof, have been taxed by the Auditor of the Court of Session or the Auditor of the Sheriff Court, as directed by creditors (s. 154). The trustee is only entitled to employ a law agent in matters properly pertaining to that profession, *e.g.* litigation and conveyancing and advising on legal difficulties. He ought to examine the law accounts before taxation and, if necessary, appear before the taxer (A. of C. Notes, No. XVIII.).

Where the law agent is one of the commissioners he is not entitled to charge for professional services, but may be recouped for outlays while so acting (Geddes's Trs., 6th April 1865). The commissioners must also see that none of the work charged for in the law agent's account is such as the trustee ought to have done himself in virtue of his office (A. of C. Notes for Commissioners). Examine *bank account* duly certified by the bank to see if moneys duly lodged by trustee, and to determine as to

[1] Unless the date of payment of the dividend has been accelerated, in which case other periods may be accelerated also (ss. 121 and 130; see p. 49). Separate accounts for company's and individual partner's estates must be kept (A. of C. Notes, No. VI.).

penal interest, if any [1] (A. of C. Notes for Commissioners).

(*b*) Trustee's commission or fee fixed.[2]

(*c*) Balance which, in opinion of commissioners, is, after deducting any entries objected to, due to or by the trustee to be certified by a writing engrossed or copied in Sederunt Book.[1]

(*d*) Declaration as to dividend.

NOTICES (ss. 122 and 124).

(*a*) *In Gazette* within eight days after fourteen days above mentioned.

(*b*) *By circulars to creditors* on or before first lawful day after fourteen days above mentioned.

Stating—

(1) Amount of trustee's commission or fee.[2]

(2) Dividend, and date and place of payment.

(3) { Claim admitted, and amount of same and dividend; or
Claim rejected, and amount of same (copy deliverance to be annexed).

Copy sent to accountant (s. 80).

(*c*) *By circular to bankrupt*, intimating trustee's commission or fee as fixed by commissioners.

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[1] The trustee is liable in penal interest at the rate of 20 per cent. per annum upon the excess over £50 of any sum he retains in his hands for more than ten days, and also, unless default from innocent cause, to dismissal from office or censure and to forfeit commission and pay expenses. He must lodge all moneys received in such bank as may be directed by a resolution of a majority in number and value of the creditors present at any general meeting, or, failing such direction, in any joint-stock bank of issue in Scotland, provided that the bank be not one in which the trustee is acting partner, manager, agent, or cashier. The account must be in name of the trustee in his official character. The bank must balance the account at least once a year (ss. 78, 79, 121, and 158).

The fund set apart for payment of a dividend is subject to these provisions, and the trustee is entitled only to draw or pay from time to time the amount of dividends actually claimed by creditors (Freyd's Tr., 1864, 2 M. 1293; A. of C. Notes, No. VII.).

[2] The *actual* sum allowed and the realisations to which it applies ought to be stated (A. of C. Notes, No. XIX.). The amount must be settled. It is not permissible to authorise the trustee to take a payment to account or to retain as extra commission any subsequent unapplied balances (*ibid.*). The commission is inclusive, and an additional charge cannot be made for clerk's writings (Lindsay *v.* Hendrie, 1880, 7 R. 911).

APPEALS AGAINST DELIVERANCE OF COMMISSIONERS FIXING TRUSTEE'S COMMISSION (ss. 122 and 169).

(*a*) *Under section* 122.

By trustee, creditor, or bankrupt.
To Accountant of Court.
Within ten days from issue of circular intimating amount of commission.

In form of a note addressed to the Accountant.

Thereupon trustee transmits to Accountant—

(1) Deliverance by commissioners.
(2) Relative account.

The Accountant of Court may—

(1) Approve of deliverance ; or
(2) Suggest to appellant modification he considers reasonable.

Failing agreement of parties—

Accountant reports to Lord Ordinary or Sheriff (as case may be), whose decision is final.

Procedure subsequent to decision—

(1) *If the trustee's commission is altered* commissioners meet within eight days of decision—
(*a*) Audit accounts as altered.
(*b*) Declare dividend as adjusted.
Notice in *Gazette* / Circular to creditors } within four days thereafter.

(2) *If trustee's commission is not altered*—
Notice in *Gazette* / Circular to creditors } within eight days of decision.

(*b*) *Under section* 165 (*never adopted in practice*).

By trustee, creditor, or bankrupt.
To Lord Ordinary or Sheriff.
Within fourteen days from date of deliverance.
Copy of note of appeal and deliverance thereon served upon respondent.
Parties heard vivâ voce.
Case disposed of *with or without record.*

APPEALS AGAINST TRUSTEE'S ADJUDICATION ON CLAIMS.

Within *fourteen* days from *Gazette* notice of dividend (ss. 124 and 127) ; see p. 44.

COPIES OF ACCOUNTS TRANSMITTED TO ACCOUNTANT.[1]

Before expiration of six months from award of sequestration.
Certified by trustee (s. 80).

SCHEME OF DIVISION PREPARED (s. 125).

Before expiration of six months from award of sequestration.
Open to inspection.
Notice sent to each creditor of amount payable to him as per scheme.

PAYMENT OF DIVIDEND (s. 129).

On first lawful day after expiry of said six months, and *at place appointed.*

NOTE.—Dividends on claims under appeal or contingent must be lodged in a separate account in a bank appointed by creditors or in a joint-stock bank of issue in Scotland in names of the trustee and commissioners.

SUBSEQUENT DIVIDENDS.

SECOND DIVIDEND.—Four months later (ss. 127 and 128).

SUBSEQUENT DIVIDENDS.—At intervals of three months.
Procedure similar to above (s. 129).

ACCELERATION OF DIVIDENDS.

(Section 130.)

The trustee and commissioners, *with consent of Accountant*, may accelerate the payment of any dividend and the procedure relative thereto.
Provided that the first dividend is not earlier than four months from award of sequestration.

POSTPONEMENT OF DIVIDEND.

(Section 131.)

The commissioners may at any time postpone a dividend until *the next statutory period*, and, *if they think fit*, instruct a notice in the *Gazette*.
The trustee's accounts must, however, be audited at the usual statutory periods.

[1] Also prior to each successive period assigned for payment of a dividend, whether a dividend is paid or not (A. of C. Notes, No. VI.). The accounts must be patent to commissioners and to creditors or their agents at all times (s. 80).

ALTERATION OF PERIODS.

(Section 132.)

On application to Court of Session, Lord Ordinary, or Sheriff, by trustee and commissioners, in special circumstances (*e.g.* where estate is mostly land), periods may be altered to suit circumstances.

ANNUAL RETURN TO SHERIFF.[1]

(Section 157.)

On or before 15th January.
In form prescribed by Act (Schedule H).[2]

Penalty for failure—
Removal from office, or censure and payment of expenses.
The Sheriff reports within fourteen days thereafter upon all sequestrations depending in his Sheriffdom to the Accountant of Court.

SALE OF WHOLE OUTSTANDING ESTATE (Heritable and Moveable).

(Section 133.)

Competent upon lapse of twelve months from award of sequestration.[3]

PROCEDURE—

(1) *Meeting of creditors.*

Called by trustee with consent of commissioners.
Gazette notice given of same.
Circular sent, fourteen days prior to the meeting, to creditors *claiming* upon the estate.
With valuation of (*a*) the estates ;
(*b*) the outstanding debts ;
(*c*) the consigned dividends.

[1] Prior to discharge the trustee ought to prepare a continuation of last return to Sheriff-Clerk where such does not show results of whole accounting. This may be engrossed in Sederunt Book or sent to Accountant in separate form (A. of C. Notes, No. XI.).

[2] The Accountant issues annually forms explaining the mode in which the return ought to be made up. Separate returns must be made for company's and partners' estates (A. of C. Notes, No. IX.).

[3] A sale of book debts and cash balances *within* twelve months is incompetent (Stewart *v.* Crookston, 1910, 47 S.L.R. 548).

Resolution in favour of sale must be carried by three-fourths in value of creditors present.

(2) *Advertisement of sale.*

One insertion in *Gazette* one month previous to sale.
Also one notice in such other *newspapers* as creditors may direct.

(3) *Sale by public auction.*

CONTENTS OF SEDERUNT BOOK.[1]

(Section 80, and A. of C. Notes, No. X.)

1. Sheriff's deliverance appointing commissioners (s. 72).
2. Particulars of oaths and grounds of debt exhibited to trustee and date produced (ss. 46 and 64).
3. Any intimation by creditor of recall of mandate of commissioner (s. 72).
4. Bankrupt's state of affairs (s. 77).
5. Examination of bankrupt and statutory oath (s. 91).
6. Declaration of dividends by commissioners (s. 121).
7. Certificates by commissioners of balances in trustee's hands at close of statutory periods (s. 121).
8. All minutes, accounts, reports, circulars, certificates of postage, and all information necessary to give a full account of the sequestration (s. 80; A. of C. Notes, No. X.).
9. Trustee's report on the bankrupt's conduct (s. 143).

The Sederunt Book must be open to inspection of the Accountant of Court, commissioners, and to the creditors or their agents at all times (ss. 159 and 80).

Documents of a confidential nature need not be engrossed in Sederunt Book or exhibited to other than the commissioners or the Accountant (s. 80).

Before transmitting Sederunt Book to Accountant a continuation of the last return to the Sheriff-Clerk (where necessary to show results of whole accounting) ought to be engrossed in Sederunt Book (or furnished to Accountant separately) (A. of C. Notes, No. XI.).

[1] The statutory contents of the Sederunt Book are given. In practice, however, it is customary to engross all documents, beginning with the petition, so that the book may contain a complete record of the proceedings.

Where the sequestration is terminated by a composition contract the following additional documents must be engrossed in Sederunt Book (A. of C. Notes, No. XII.) :—

1. Circular letter reporting offer entertained, with state of affairs and valuation of the estate appended, and certificate of postage of same.
2. Bond of caution for composition.
3. Trustee's report to Sheriff as to composition.

DISCHARGE OF BANKRUPT.

PRIMARY CONDITION.[1]

Bankrupt must have paid 5s. per £ or proved that he is not responsible for failure to do so (s. 146).

PROCEDURE—

1. *Report by trustee upon conduct of bankrupt* [2] (s. 143).
   Particularly as to—
   (*a*) Disclosure and surrender of estate.
   (*b*) Attendance for examination.
   (*c*) Any collusive transactions [3] (ss. 150 and 151).
   (*d*) Causes of bankruptcy—innocent or culpable; extravagance; reckless trading.[4]
   (*e*) Want of business books (A. of C. Notes, No. XIII.).
   Copy engrossed in Sederunt Book forthwith.

2. *Consent of creditors* (*see under*) (s. 143).
   Testified in writing subsequent to trustee's report and before presentation of petition (Gilfillan, 1836, 15 S. 149).

[1] If this condition not complied with and discharge refused, the bankrupt may at any future time make up the dividend to 5s. per £ and lodge a fresh application for discharge (s. 146 (4)). Example of discharge refused —Stock Exchange losses, see Ronald Clark, Pet., 30 S.C.R. 183.

[2] The report by the trustee upon the bankrupt's conduct must be prepared *as soon as may be after the examination* of the bankrupt, but is not demandable from the trustee till the expiration of five months from the award of sequestration (s. 143). The trustee is not entitled to any fee for this report (White *v.* Robertson, 1879, 6 R. 854).

[3] All such are null and void, and any creditor receiving a consideration for concurring in or facilitating the bankrupt's discharge may forfeit his dividend and his debt, and be liable to pay to trustee *double* the amount of such consideration (s. 150). The bankrupt forfeits his right to a discharge (s. 151).

[4] Comments on meaning of reckless trading, see Alexander's Sequestration, 34 S.C.R. 277.

Where consents are given at a meeting, the authenticated minutes of the meeting are sufficient evidence.

N.B.—Trustee's report must be specifically referred to in creditor's consent.

3. *Petition to Lord Ordinary or Sheriff* (s. 143).
   By bankrupt or his mandatory.
   (*a*) *At any time after second statutory meeting.*
   With concurrence of every creditor.
   (*b*) *On expiry of six months from award of sequestration.*
   With concurrence of a majority in number and four-fifths in value.[1]
   (*c*) *On expiry of twelve months from award of sequestration.*
   With concurrence of a majority in number and two-thirds in value.[1]
   (*d*) *On expiry of eighteen months from award of sequestration.*
   With concurrence of a majority in number and value.[1]
   (*e*) *On expiry of two years from award of sequestration.*[2]
   Without concurrence of creditors.
   Relative productions (s. 143).
   Report by trustee.
   Evidence of consent of creditors.
4. *Intimation of petition by applicant* (s. 143).
   By circular to all known creditors (see footnote, p. 63).
   By notice in *Gazette*.
5. *Objections*[3] *to petition* (s. 143).
   Creditors allowed *twenty-one days* from *Gazette* notice to appear and oppose discharge.[3]
6. *Report by Accountant of Court upon bankrupt's conduct* (s. 149).
   When considered necessary in discretion of judge.

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[1] These majorities refer to the whole creditors and not only to those present at a meeting. In computing majority "in number" debts under £20 are not reckoned (ss. 143 and 96).

[2] A creditor objecting must lodge a formal note of appearance (Wilson's Sequestration, 32 S.C.R. 148). After two years the onus lies on the objector to show cause why discharge should not be granted (*ibid.*; Alexander's Sequestration, 34 S.C.R. 277).

[3] Discharge was refused where the estate was insufficient to pay the law expenses and trustee's fee, on the ground that the bankrupt cannot take benefit by the sequestration without paying the necessary expenses of the proceedings (M'Caiter *v.* Aikman, 1893, 20 R. 1090; Bathgate's Sequestration, 30 S.C.R. 158). Objection on ground of reckless trading, see Alexander's Sequestration, *supra*.

Although two years have elapsed and although no creditor opposes, the Court may refuse discharge if Accountant of Court reports unfavourably (s. 149; Dugald M'Coll's Sequestration, 1913, 29 S.C.R. 278). In case of fraud the Accountant may lay information before Lord Advocate (s. 161).

7. *Examination of bankrupt* (s. 146 (2)).
   When necessary in discretion of judge.

8. *Deliverance No.* 1 (s. 143).
   (*a*) That bankrupt entitled to discharge; or
   (*b*) Discharge refused; or
   (*c*) Consideration deferred;
   with such conditions attached in (*a*) or (*c*) as case may require.

9. *Appeals against deliverance* (ss. 166 and 167).
   (*a*) *Against deliverance of Sheriff.*
      To Inner House of Court of Session.
      By note of appeal lodged with Sheriff-Clerk.
      Within eight days.
   (*b*) *Against deliverance of Lord Ordinary.*
      To Inner House of Court of Session.
      By reclaiming note presented.
      Within fourteen days.

10. *Declaration by bankrupt* (s. 144).
    (Or oath if required by trustee or any creditor.)
    Before Lord Ordinary or Sheriff (or by commissioner).
    States.—(*a*) Full and fair surrender of estate.
    (*b*) No collusive transactions to obtain consent of creditors (s. 150).

11. *Deliverance* (*No.* 2) *discharging bankrupt* (s. 144).
    Discharges bankrupt of all obligations contracted prior to sequestration [1] (see note 2, p. 65, as to liability for Crown debts).

12. *Appeals against final deliverance.*
    Same procedure as above (9).

13. *Registration* (s. 144).
    Signed extract of deliverance sent to Accountant of Court by Clerk of the Bills or the Sheriff-Clerk (Register of Sequestrations).

[1] Unlike discharge under composition, discharge as above does not necessarily reinvest bankrupt in estate. His radical right only emerges when sequestration is ended and trustee discharged (s. 155).

Abbreviate sent to Register of Inhibitions and Adjudications. The Keeper, if required, will endorse abbreviate with a certificate of registration (s. 145 and Schedule E, No. 4 and No. 2; 31 & 32 Vict. c. 64, s. 17). No fee is payable.

DISCHARGE OF TRUSTEE.

After final division of estate.

PROCEDURE—

1. *Meeting of creditors held* (s. 152).
   Gazette notice and circular to creditors who have produced oaths. *Issued* by trustee. *Stating* time, place, and purpose of meeting.
   Meeting held *not sooner than* fourteen days from *Gazette* notice.
   Sederunt Book and accounts, with list of unclaimed dividends, submitted.
   Creditors declare opinion of conduct of trustee. If no creditor appears, trustee should prepare a certificate to that effect, stating in detail that statutory requisites have been complied with, and, after engrossing same in Sederunt Book, lodge it with the petition for discharge (A. of C. Notes, No. XX.).
2. *Unclaimed dividends and any unapplied balances lodged in bank* where funds of estate have been lodged, in a special account called "Account of Unclaimed Dividends" (s. 153; see Form of D/R in A. of C. Notes).
3. *Sederunt Book, accounts made up to date, and deposit-receipts for unclaimed dividends transmitted to Accountant* (s. 153; A. of C. Notes, No. XI.).[1]
4. *Petition to Lord Ordinary or Sheriff.*
   Accompanied by minute of creditors' meeting, *Gazette* notice, certificate of postage of circulars to creditors, and Accountant's acknowledgment of Sederunt Book, etc.
   Intimation to creditors who objected at the meeting and to the Accountant (s. 152; Lindsay *v.* Hendrie, 1879, 6 R. 1246; 1880, 7 R. 911).
   Remit to Accountant to report (usual; *cf.* s. 149).

[1] The Sederunt Book should contain a continuation of the last return to the Sheriff in statutory form where any change has taken place therein (A. of C. Notes, No. XI.).

5. *Objecting creditors heard*[1] (s. 152).
6. *Report by Accountant of Court* (when required).
7. *Deliverance discharging trustee* (s. 152).
8. *Registration* (s. 152).
   Extract decree, sent by Clerk of Bills or Sheriff-Clerk to Accountant and entered in *Register of Sequestrations*.
   Bond of caution then delivered up.

REMOVAL OF TRUSTEE.[2]

At the instance of—

1. Majority of creditors in number and value at meeting called for the purpose (s. 71).
   Without assigning any reason.
   Appeals to Lord Ordinary or Sheriff, and thereafter to Court of Session.[3]
   On application to Sheriff a warrant for meeting to elect new trustee is issued.
2. One-fourth in value of creditors (*ibid.*).
   Petition to Lord Ordinary or Sheriff showing cause.
   Served on trustee.
   Intimated in *Gazette*.
   Deliverance (*a*) Removes trustee ; and
   (*b*) Fixes date for fresh election.
3. *Any commissioner or any single creditor.*
   (*a*) *Where* trustee has been *discharged*, is *dead*, or has *resigned* or has been *removed* or is three months furth of Scotland (*ibid.*).
   On application to Lord Ordinary or Sheriff a warrant for meeting to elect a new trustee will be issued.

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[1] Failure of trustee to take proceedings to recover "acquirenda" may constitute a valid objection to trustee's discharge. A creditor is entitled to appear and object under s. 152 without first appearing and stating objection to Accountant of Court under s. 158 (Hamilton's Tr. *v.* Caldwell, 1918, 12 S.C. 190).

[2] The procedure in the election of a new trustee or commissioner is the same as in the first election. The meeting for the election of a new trustee in case 3 (*a*) above is called and advertised by the commissioner or the creditor at whose instance the removal has been granted, for a date fixed by the Lord Ordinary or the Sheriff, as the case may be. The meeting for the election of a new commissioner is called and advertised by the trustee. As to general rules for calling meetings, see *ante*, p. 30.

[3] The Sheriff may, pending any appeal, make an order for interim administration of estate (s. 168).

(*b*) *Where* trustee fails to make *annual return* [1] (Schedule H, and s. 157).

On petition to Lord Ordinary or Sheriff he may be removed.

Deliverance as above.

(*c*) *Where* trustee *fails to perform duties* properly [1] (s. 158).

On complaint the Accountant of Court *reports* to Lord Ordinary or Sheriff.

Deliverance as above.

4. *The Accountant of Court* (ss. 158 and 160).

On trustee's failure to perform his duty, Accountant may, of his own accord, report as above, and Lord Ordinary or Sheriff may deal summarily with the matter. In the case of malversation or misconduct on part of the trustee, the Accountant may give information to Lord Advocate for criminal prosecution (s. 161).

REMOVAL OF COMMISSIONERS.[2]

At the instance of—

1. *Majority of creditors* in value (s. 73).

At meeting called for the purpose (successor may be elected).

2. *Single creditor* (s. 158).

Where commissioners fail to perform duties properly.

On complaint the Accountant of Court reports to Lord Ordinary or Sheriff, who may remove offender.[3]

Meeting then called by trustee to fill vacancy (s. 72).

3. *The Accountant of Court* (ss. 158 and 160).

On commissioner's failure to perform duty, the Accountant may, of his own accord, report as above, and in case of fraud lay information before Lord Advocate (s. 161).

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[1] For failure to make the annual return to Sheriff-Clerk or to properly perform the duties of the trusteeship, the Lord Ordinary or Sheriff may either remove the trustee from office or only subject him to censure. The trustee may be found liable in expenses (ss. 82, 157, and 158).

[2] Where a commissioner declines to act, dies, resigns, or becomes incapacitated, the trustee may call a meeting to elect a new commissioner (s. 72).

[3] For failure to perform duties properly, a commissioner may be removed from office or subjected only to censure (ss. 82 and 158).

On recall of mandate (s. 72).

Written intimation of recall sent to trustee.

Trustee records intimation in Sederunt Book and calls meeting to fill vacancy.

On commissioner ceasing to have an interest in estate (*e.g.* where claim has been purchased or satisfied) he *ipso facto* vacates office.

Trustee calls meeting to fill vacancy.

RECALL OF SEQUESTRATION.

A. On Petition within Forty Days after Award (s. 30).

(*Exception.*—Where deceased's representatives edictally cited, any person having interest *may petition at any time before advertisement of first dividend.*)

By [1]—

1. Debtor if he has not consented to sequestration.
2. Successors of deceased debtor if they have not consented. (Except where mandatory of deceased has got sequestration.)
3. Creditor.

To Lord Ordinary.

Petition [2]—

States grounds.[3]

Accompanied by affidavit and voucher.

Signed by petitioner, counsel, or agent.

Deliverance by Lord Ordinary.

Instructs service and intimation as under.

Fixes time for answers.

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[1] In the event of the withdrawal, bankruptcy, or death of any creditor who is a party to the proceedings, another creditor may be sisted in his place. In the event of the death of the debtor the proceedings shall be followed out so far as circumstances permit (s. 33).

[2] Pending any petition for recall, and until the sequestration is finally recalled, the proceedings in the sequestration go on (s. 32).

[3] See p. 15, "Objections to Petition." A petition for recall on the ground that the bankrupt's balance-sheet showed an actual surplus of assets over liabilities and that his present inability to pay was due to temporary circumstances, was refused. Insolvency under the Bankruptcy Statutes means "practical," not necessarily "absolute," insolvency (M'Kenzie *v.* Todd Brothers & Co., 1912, 1 S.L.T. 464).

Copy of petition and deliverance to be served on—

1. Petitioner for sequestration.
2. Parties concurring in sequestration petition.
3. Trustee.

Notice in Gazette.

On expiry of time fixed the Lord Ordinary pronounces judgment.

B. On Petition at any Time (s. 31).

By nine-tenths in number and value of creditors ranked.
To Lord Ordinary.
Petition similar to above.
Deliverance by Lord Ordinary. Instructs intimation in *Gazette*, as under.
Gazette notice requiring all concerned to appear within fourteen days.
On expiry of time fixed the Lord Ordinary pronounces judgment.

C. On Petition within Three Months from Date of Sequestration (s. 43).

On special grounds, viz. that—

(*a*) Majority of creditors in number and value are resident in England or Ireland ; and

(*b*) That owing to (1) the situation of bankrupt's property, or (2) other causes, it is expedient that sequestration be carried out under the laws of England or Ireland.

By [1]—

1. The Accountant of Court.
2. Any creditor.
3. Any person having interest.

To the Lord Ordinary or either Division of Court of Session.
Inquiry, if necessary.[2]
Deliverance recalling sequestration.[3]

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[1] In the event of the withdrawal, bankruptcy, or death of any creditor who is a party to the proceedings, another creditor may be sisted in his place. In the event of the death of the debtor the proceedings shall be followed out so far as circumstances permit (s. 33).

[2] Pending any petition for recall, and until the sequestration is finally recalled, the proceedings in the sequestration go on (s. 32).

[3] If deliverance is by Lord Ordinary it is subject to review (s. 43).

D. Termination of Sequestration ex nobili officio.[1]

In exceptional cases where statutory requisites cannot be complied with.[2]

Court orders intimation and proof, if necessary.

Registration (s. 30).

Register of Sequestrations.

Register of Inhibitions and Adjudications (Schedule E, No. 5).

DEED OF ARRANGEMENT.

(Section 34.)

1. *Resolution of creditors approving thereof.*

At meeting for election of trustee or a subsequent meeting called for the purpose.

Majority in *number and three-fourths in value of creditors present* in person or by proxy (s. 34).

2. *Report of resolution* (*ibid.* s. 35).

By *bankrupt or person appointed by meeting.*

To Lord Ordinary or Sheriff.

Within four days.

Asking a sist of the sequestration for two months.

3. *Sequestration sisted* (*ibid.* s. 35).

By Lord Ordinary or Sheriff.

After objecting parties have been heard.

4. *Interim management of estate* (where necessary) (*ibid.* s. 36).

On application by any creditor.

To the Lord Ordinary or the Sheriff.

5. *Deed* (*ibid.* s. 37).

Subscribed by or by authority of a majority in number and three-fourths in value of the whole creditors, also the bankrupt, and cautioner (if any).

Lodged with Lord Ordinary or Sheriff within period of sist, *i.e.* two months.

Intimation (North of Scotland Banking Co. *v.* Ireland, 1880, 8 R. 117, per L. Shand).

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[1] *Nobile officium* = the equitable power vested in the Court of Session to vary the law where the law does not provide an equitable remedy.

[2] *E.g.* (1) Bankrupt discharged under extra-judicial arrangement entered into after sequestration; or

(2) Petitioner disclaims petition; or

(3) Mistake as to insolvency.

By *Gazette* notice and notice in local newspaper, and circular to non-acceding creditors.

NOTE.—When arrangement is in the form of a composition, caution for payment may be required, but is not a legal essential; *cf.* Composition Contract, *post*, p. 62 (s. 34).

6. *Objections by creditors* disposed of.[1]

7. *Declaration by bankrupt.*

That state of affairs is correct, and that there are no other non-acceding creditors than those to whom intimation has been sent.

8. *Deliverance* (s. 37).

By Lord Ordinary or Sheriff.
Declares sequestration at an end.[2]

NOTE.—The arrangement is binding upon all creditors, whether they have acceded or not, but the bankrupt is not discharged, or only discharged to the extent of any express stipulation for discharge in the deed. Apart from such stipulation, therefore, upon failure to pay the composition, the original debt *revives* [3] (*cf.* Composition Contract, pp. 67 and 106; Alexander *v.* Yuille, 1873, 1 R. 185).

If the sist is not applied for within the prescribed period of four days or is refused, or the deed is not produced within the period of two months as above, or if it is not approved, the sequestration proceeds and the period of time subsequent to the resolution of the creditors is not reckoned in calculating the periods of time under the sequestration (s. 38).

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[1] Where a friend of the bankrupt paid a sum to a consenting creditor, the Court refused approval of the deed (Tait's Sequestration, 1912, 29 S.C.R. 94, and s. 150 of Act).

[2] Full effect is, however, given to the sequestration for the purpose of preventing, challenging, or setting aside preferences.

[3] It has been held that a subsequent petition for sequestration by a creditor whose debt was incurred after the deed of arrangement could not be refused on the ground of the existence of a prior sequestration, and that the trustee under the deed of arrangement would be bound to denude in favour of the trustee in the second sequestration (A. *v.* B., Bill Chamber, 1912; *Accountant's Magazine*, 1913, p. 113).

9. *Registration* (ss. 30 and 39).

Register of Sequestrations.
Extract of deliverance sent to Accountant of Court.

Register of Inhibitions and Adjudications.
Abbreviate lodged (Schedule E, No. 5).

COMPOSITION CONTRACT (IN SEQUESTRATION).

Offer of Composition.

Essentials—

A rateable proportion per £ of debts (Bell's *Com.*, ii. 351).

For payment of all ordinary creditors, whether claims lodged at date or not [1] (s. 134).

Conditions must be *expressly* stated.

E.g. Right to exchange a creditor's security or preference [2] (s. 140).

Made by the bankrupt or his friends or his successors if bankrupt deceased, or by one or more partners in case of bankrupt company (s. 134).

Signed by party making the offer.

Offer of Security for Composition.

The bond must *cover* payment of the *whole* amount of the composition to *all* creditors of bankrupt, whether claims lodged at date or not [3] (M'Vicar, Pet., 1829, 8 S. 146).

Cautioner may *stipulate* for conveyance of estate in security for caution.

Offer usually *appended* to offer of composition, and must be *signed* by cautioner.

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[1] Preferable debts, if not already paid out of the estate, must be paid *in full* by the bankrupt. The offer of composition and bond of caution must provide for this, as also for payment of the sequestration expenses (s. 138).

[2] When the bankrupt wishes to challenge the security of any creditor or any fraudulent preference, he must obtain an assignation of the trustee's right to challenge, and give due notice in writing to the creditor affected (s. 140; Bell's *Com.*, ii. 351, 352).

[3] The cautioner is not liable after the lapse of two years in respect of any claim not lodged prior to the deliverance approving of the composition (s. 141).

PROCEDURE—

When offer is made,—

A. AT MEETING FOR ELECTION OF TRUSTEE (ss. 134, 135, 137, 138).

1. *Offer entertained* by a *majority in number and three-fourths in value* of creditors present (s. 134).

2. *Gazette notice* (s. 134).
   Stating—
   Offer and security entertained.
   Final decision to be made at second statutory meeting.
   Other particulars, as set out for *Gazette* notice on p. 23.

3. *Circular to Creditors* [1] (s. 134).
   Stating—
   Offer and security entertained.
   Date of meeting for acceptance (*i.e.* second statutory meeting).
   Abstract of state of affairs, and valuation of estate so far as can be done.
   Other particulars, as set out for circular on p. 24.
   Engrossed in Sederunt Book with certificate of postage (A. of C. Notes, No. XII.).

4. *Examination of bankrupt* intervenes here (*vide* p. 25), but may be adjourned.

5. *Offer accepted* (s. 135).
   At second statutory meeting.
   By majority in number and three-fourths in value of creditors present.

6. *Bond of caution* (s. 135).
   Executed by bankrupt (or his successors or, in case of a company, the partners) and the cautioner.
   Lodged with trustee.
   Engrossed in Sederunt Book (A. of C. Notes, No. XII.).

[1] The circular must be issued to all creditors who have claimed upon the estate or are mentioned in the bankrupt's state of affairs (s. 134). It is the practice in the Glasgow Sheriff Court to insist that notices be sent even to creditors for amounts under £20, notwithstanding section 95 (see p. 30).

7. *Audit of trustee's accounts* [1] (s. 138).

By the commissioners.
Trustee's remuneration fixed (subject to review of Lord Ordinary or Sheriff).

8. *Report by trustee of acceptance of the offer* (s. 135).

Stating—
Resolution of meeting.
Amount of composition.
Amount of caution.
Accounts audited.
Trustee's remuneration fixed.
Sequestration expenses provided for.

Signed by trustee.

Lodged with Bill Chamber or Sheriff-Clerk.

Accompanied by—
Bond of caution, as above.
Minutes of both meetings of creditors authenticated.
Copy of *Gazette* containing statutory notice.
Certificate of postage of circulars to creditors.
Engrossed in Sederunt Book (A. of C. Notes, No. XII.).

9. *Creditors' objections heard* (s. 135).

E.g. Irregularity in proceedings.
Fraud and collusion.
Insufficiency of caution.
Unreasonableness of composition.[2]
Failure to pay 5s. per £, or prove not responsible (s. 146 (1) and (4), and note 1, p. 52).
Failure to provide for sequestration expenses.

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[1] The trustee must prepare accounts down to each statutory period that occurs before the composition is approved of and forward certified copies of these and of his final account to the Accountant (A. of C. Notes, No. XII.).

[2] If there is a *spes successionis*, it must be taken into account in considering the reasonableness of the offer (Bradshaw *v.* James Kirkwood & Son, 1904, 7 F. 249, and ss. 2 and 97 of Act).

A payment by friends of the bankrupt, from funds not part of the estate, to secure the consent of a creditor, constitutes a preference null and void under s. 150. A deed of arrangement which disclosed such a transaction was held not to be "reasonable" in terms of the Act (Tait's Sequestration, 1913, 29 S.C.R. 94).

10. *Deliverance approving of composition* (or refusing and stating grounds of refusal as case may be) (s. 135).
By Lord Ordinary or Sheriff after hearing any objectors.

11. *Declaration by bankrupt* [1] (or oath if required by the trustee or any creditor) (s. 137).
Before Lord Ordinary or Sheriff.
Stating—
(*a*) Full and fair surrender of estate.
(*b*) No collusive transactions to obtain consents of creditors.

12. *Deliverance discharging bankrupt* (s. 137).
By Lord Ordinary or Sheriff.
Declares—
(*a*) Sequestration at an end.
(*b*) Bankrupt discharged from obligations contracted prior to sequestration, subject to claims of creditors and cautioner for amount of composition.[2]
(*c*) Bankrupt reinvested in estate.

13. *Appeals* within eight or fourteen days (see under Discharge of Bankrupt, p. 54) [3] (ss. 166 and 167).

14. *Registration* (s. 137).
Bond of caution lodged in Court of Session or Sheriff Court, as above, and extract of deliverance obtained for trustee's use.
Extract of deliverance sent to Accountant by Clerk of the Bills or Sheriff-Clerk (*Register of Sequestrations*).
Abbreviate issued by Clerk of the Bills or Sheriff-Clerk and recorded in the *Registers of Inhibitions and Adjudications* (and certified by Keepers of

[1] Or other party making the offer of composition (s. 137).

[2] Crown debts are expressly exempted from the discharge under the Bankruptcy Act. The bankrupt's discharge in sequestration does not release him from liability for these unless the Treasury consents (s. 147).

[3] Unlike an extra-judicial arrangement (see p. 96) a composition contract entered into during sequestration binds all creditors to the terms thereof, whether acceding or not. The objecting creditor's remedy is to appeal against the discharge of the bankrupt (see above (13)).

such registers, if required) (s. 145 and Schedule E, No. 4 and No. 2).

15. *Payment of composition.*

Usually by bills of exchange for instalments of composition (accepted by bankrupt and cautioner). The trustee should see that all documents of debt are delivered to him in exchange for the composition bills.

16. *Discharge of trustee.*[1]

As on p. 55.

Sederunt Book must be sent to Accountant as in ordinary case (A. of C. Notes, No. XI.; as to contents *vide* p. 52, and A. of C. Notes, No. XII.

B. At Second Statutory Meeting, or Subsequent Meeting Called for the Purpose (s. 136).

Procedure, same as above.

Except—

(*a*) *If meeting to entertain offer is subsequent to second statutory meeting.*

Trustee, with consent of commissioners, calls meeting.

(*b*) *Meeting for acceptance of offer.*

Not less than twenty-one days after previous meeting.

Called by trustee.

Seven days' notice to be given by circular, as above.

C. After having been Rejected or become Ineffectual (s. 142).

Entertained by *nine-tenths* in *number and value* of creditors ranked and entitled to be ranked, assent to be made *in writing.*

Accepted subsequently at a meeting.

By resolution of a *majority in number* and *nine-tenths in value* of creditors present.

[1] The trustee or his cautioner is liable, on petition at any time to the Lord Ordinary or Sheriff by the bankrupt or the cautioner guaranteeing the composition, to account for his (the trustee's) intromissions (s. 139).

Together with express assent of *nine-tenths in value* of all creditors entitled to be ranked.

Other procedure, as above.

NOTE.—Under a composition contract in sequestration the bankrupt is discharged, and upon failure to pay the composition the original debt does *not revive*, the creditor's claim being for the amount of the composition only (s. 137). *Cf.* Deed of Arrangement, p. 61, and Extra-Judicial Composition Contracts, p. 106.

EXTENT OF TITLE OF TRUSTEE IN SEQUESTRATION.

(Section 97.)

The act and warrant, *ipso jure*, vests in the trustee *all estate* in which the bankrupt has a *beneficial interest* and which he can legally dispose of.[1]

Subject to all *equitable exceptions* pleadable against the bankrupt (Herit. Revers. Co. *v.* Miller, 1892, 19 R. (H.L.) 43, per Lord Watson ; in Court of Session, 1891, 18 R. 1166).

In particular including or *excluding* the following to the extent undernoted.

1. Goods purchased by bankrupt but undelivered and unpaid.

Trustee can, apart from express or implied *intention* of parties, *claim* the goods.

Provided the contract is for the purchase of specific goods, or the goods have been ascertained and unconditionally appropriated to the contract (Sale of Goods Act, 1893, ss. 16, 17, and 18).

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[1] The property vests even although there is an existing obligation by the bankrupt to convey (Bank of Scotland *v.* Hutcheson, Main & Co., Ltd. (in Liquidation), 51 S.L.R. 229).

Where a loan has been repaid prior to sequestration but the security therefor has not been reconveyed, and consequently vests in the trustee, he is bound to reconvey to the borrower without consideration (Forbes Trs. *v.* Macleod, 1898, 25 R. 1012). By the Workmen's Compensation Act, 1906, s. 5, on the bankruptcy of an employer or on his making a composition or arrangement with his creditors, his rights against insurers in respect of employer's liability vest in the workman, and the preference provided by the section does not apply (see p. 86). If the employer's liability to workman is greater than that of insurer's, the workman may prove on his estate for balance of compensation due (6 Edw. 7, c. 58, s. 5).

Real estate in England, Ireland, or in any of His Majesty's dominions, vests in trustee to same extent as would have happened if the bankruptcy had taken place in these countries (s. 97 (3)).

Subject to the *seller's rights*, which *apart from express or implied agreement* are *generally* as follows :—

(*a*) *A right of lien over goods for price* (Sale of Goods Act, 1893, ss. 39 and 41).

While in possession of goods, actual or constructive.[1]

(*b*) *A right to stop goods in transitu* (Sale of Goods Act, 1893, ss. 44 and 46).

By intimation to carrier, or by recovering actual or constructive possession of the goods.

(*c*) *A right to re-sell the goods* (Sale of Goods Act, 1893, s. 48 (3) and (4)) in the following circumstances :—

1. Where goods are of a perishable nature ; or
2. Where, after notice of intention to sell, the buyer does not pay the price ; or
3. Where right of re-sale is expressly reserved in contract.

Rejection of goods by the bankrupt.

To bar the trustee's claim the bankrupt must have rejected the goods while *in transitu*, and *prior to sequestration* (s. 107).

Where right of rejection properly exercised—

(*a*) If seller *does not dissent* to rejection the goods re-vest in *him*.

(*b*) If seller *declines to allow* rejection the goods vest in the *trustee* (see Bell's *Com.*, i. 254).

2. Goods received on credit by the bankrupt after avowed insolvency.

The seller has a claim against the trustee for *restitution* (Bell's *Com.*, i. 264 ; Watt *v.* Findlay, 1846, 8 D. 529).

3. Goods sold by the bankrupt after sequestration.

Trustee has no claim for restitution if purchaser acted *in good faith* and has paid or is ready to pay the price (s. 107).

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[1] Goods in custody of a middleman are held to be undelivered, and the seller retains his lien and right of stoppage *in transitu* until notice has been given to the custodier and he acknowledges to the buyer that he is holding for him (Sale of Goods Act, 1893, ss. 29 (3) and 45 (3)). This notice and acknowledgment is termed "constructive delivery." In the case of goods in bulk stored by a middleman on behalf of the bankrupt and sold in parcels on delivery orders (*e.g.* flour, oil, and the like), mere intimation of delivery orders and the acknowledgment thereof is not sufficient to appropriate the goods to the contract. Actual separation of the bulk is necessary (Haymant & Sons *v.* M'Lintock and Others, 44 S.L.R. 691).

4. Debts uplifted by the bankrupt after sequestration.

Trustee has no claim against debtor if debtor acted *in good faith* in paying the debt (s. 107).

Important therefore that trustee give notice of sequestration and of his appointment as trustee to bankrupt's debtors as soon as possible.

5. Bills of exchange and securities uplifted by the bankrupt after sequestration.

Trustee has no claim for repayment if creditor acted *in good faith, unless* he can put creditor into his original position or reimburse him for loss or damage [1] (s. 107).

6. Acquirenda [2] [s. 98 (1)].

Vests in the trustee ipso jure from date of acquisition subject to the rights of the creditors of the person from whom such estate has come.

(*a*) Bankrupt must notify trustee of acquisition, under penalty of forfeiture of the benefits of the statute.

(*b*) Trustee may examine bankrupt thereanent.

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[1] Where the creditor has lost his recourse under a bill in consequence of the transaction the mere return of the bill by the trustee will not suffice (Pearson *v.* Ferguson, Davidson & Co., 1876, 3 R. 805).

[2] Acquirenda includes generally property of every kind acquired by the bankrupt subsequent to sequestration and before his discharge. It includes *personal earnings*, in so far as in excess of the *beneficium competentiæ* (*i.e.* the suitable maintenance of the bankrupt according to his station in life). Subject to the *beneficium competentiæ*, salaries of an office held by the bankrupt *at the date of the sequestration ad vitam aut culpam*, or a substantially equivalent tenure, have been held to vest in the trustee at date of sequestration under B.A. ss. 28 and 97 (1); but salaries paid under a contract of service terminable on notice given and salaries from appointments made after the date of sequestration, subject likewise, vest as they fall due as *acquirenda* under B.A. 98 (1). Successive applications to the Court may however not be necessary, as the Court can competently order payment to the trustee from future instalments under reservation in favour of the trustee or the bankrupt, *or any other person interested*, to apply for a reconsideration in the event of altered circumstances (Caldwell *v.* Hamilton, 1919 S.C. (H.L.) 100). Failure of the trustee to take proceedings to recover acquirenda may be a valid objection to the trustee's discharge (Hamilton's Tr. *v.* Caldwell, 1918, 12 S.C. 190). The statute provides, in the case of salaries and *pensions* of certain *Government officers*, for the payment of a portion thereof to the trustee (s. 148).

Damages recovered in respect of injury to the bankrupt's person, character, or feelings, theoretically vest in the trustee *subject* to the bankrupt's right to be indemnified thereout for injury and compensated

Completion of title thereto.

(*c*) Petition to Lord Ordinary or Sheriff by the trustee.

(*d*) Intimation of petition in *Gazette*.

(*e*) Parties heard (if necessary).

(*f*) Judgment pronounced.

7. Alimentary funds [s. 98 (2)].

Trustee may claim quoad excessum.

The amount of the excess beyond suitable aliment is fixed by the Lord Ordinary or Sheriff on petition by the trustee. The order is subject to revision from time to time on the application of the trustee or bankrupt (s. 98 (2)); of course, arrears [1] of aliment vest in the trustee, subject to the claims of alimentary creditors thereon (Bell's *Com.*, i. 127; Drew *v.* Drew, 1870, 9 M. 163, per Lord Cowan).

8. Debtor's working tools and implements.[2]

The debtor is entitled to retain the working tools and implements by which he earns his livelihood. These have been held to include the sewing machine of a dressmaker, the piano of a music teacher, the desks and books of a school teacher, and the implements of a dentist (Macpherson *v.* Macpherson's Tr., 1905, 43 S.L.R. 102, and cases there cited).

9. Spes successionis and contingent rights[3] [s. 97 (4)].

Such now vest in the trustee ipso jure as at date of sequestration, subject to such valid preferable securities as existed at that date.

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for time, trouble, and expense of litigation, *but* inasmuch as the bankrupt's right of indemnity is usually co-extensive with the sum recovered, there may be nothing left for the trustee (Jackson *v.* M'Kechnie, 1875, 3 R. 330).

Where the administrator of the estate of a deceased bankrupt (who had died before obtaining his discharge) had, in ignorance of the bankruptcy, divided the proceeds of a life policy, the recipients were ordered to repay the sums received (*In re* Bennett, [1907] 1 K.B. 149).

[1] Sums due for period from last term of payment to date of death of the receiver of the aliment are not deemed *arrears* (Romanes *v.* Maitland's Exr., 1916, 1 S.L.T. 327).

[2] The vesting clause, s. 102 of the Bankruptcy Act, 1856, transferred the moveable estate as far as attachable for debt. The corresponding section of the B.A. 1913, s. 97 (1), extends the trustee's title to estate "capable of voluntary alienation by the bankrupt," and this has been held to cover in certain cases the bankrupt's earnings, but only in so far as in excess of the *beneficium competentiæ* (see opinions in Caldwell *v.* Hamilton, 1918, S.C. 682). It is not thought that the extension can deprive the debtor of his tools as these are his means of livelihood.

[3] A "*spes successionis*," or "hope of succession," may be defeated, *e.g.* in some cases by another party surviving the beneficiary, and is distin-

The bankrupt cannot, therefore, now *intercept* or *divert* the succession or right to the prejudice of his creditors, as the intimation of the trustee's act and warrant effectively prevents this. In order to the *realisation* of such, the trustee may effect an insurance on the life of the bankrupt, and for this purpose compel the bankrupt to submit himself to medical examination (s. 78). A right of succession *vested* in the bankrupt is, of course, carried to the trustee by the previous subsections of s. 97.

10. Uncompleted contracts (Goudy, ch. xxiii. s. 3, p. 309 *et seq.*).

Trustee may adopt or repudiate such in his discretion [1] (Bell's *Com.*, ii. 343 *et seq.*).

But—

(*a*) *In case of adoption*—

Election to undertake contract must be timeously intimated (Anderson *v.* Hamilton, 1875, 2 R. 355, per Lord Neaves).

(*b*) *In case of repudiation*—

A claim for damages will emerge against the estate (Bidoulac *v.* Sinclair's Trs., 1889, 17 R. 144).

Exception—

Executry contracts personal to the bankrupt—in which case a *delectus personæ* is involved—cannot be carried out by the trustee. The bankrupt, however, may complete same for the benefit of his creditors (Anderson *v.* Hamilton, *supra*).

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guished from a "*jus crediti*" and a *vested right*, which cannot be diverted from the beneficiary or his successors or assignees (although the actual enjoyment thereof may be deferred until the happening of some certain future event) (see *The Property of Married Persons*, by David Murray, LL.D., s. 199). Any non-vested contingent right of succession in favour of the bankrupt under a will or a marriage contract, or under any irrevocable deed, is by virtue of the act and warrant transferred to the trustees (ss. 2 and 97 (4)). But this provision does not apply to sequestrations instituted prior to 1st January 1913.

[1] A trustee adopting any of the bankrupt's pecuniary contracts, or entering into new contracts on behalf of the estate, becomes personally responsible for the fulfilment of the obligations thereunder, but is entitled to relief against the estate and any creditors *who have undertaken responsibility*. The trustee should therefore, before undertaking liability in this connection, safeguard himself by obtaining the personal undertaking of substantial creditors to indemnify him in case of loss. The same precaution should be taken before incurring litigation expenses, for which the trustee is also personally liable (s. 53). He becomes liable for the rent of premises if, without the landlord's consent, he sells the stock or furnishings hypothecated or any part thereof, whether or not the articles sold realise the amount of the rent (Mackersy, 1913, 29 S.C.R. 28).

11. Copyrights.

The trustee is only entitled to the benefit of such on reserving to the author such royalty or share of profits as would have been payable by the bankrupt (s. 102).

12. Money or property held by the bankrupt in trust (Goudy, ch. xxiii. s. 5, p. 289 *et seq.*).

Trustee in sequestration has no claim if money or property is *distinguishable* in his hands. Trust moneys can be vindicated, although they may have been *blended* with moneys belonging to the trustee, provided they can be traced with reasonable certainty. Truster's remedy is to petition the Lord Ordinary or the Sheriff to have property claimed taken out of the sequestration (s. 99) (Herit. Revers. Co. *v.* Miller, 19 R. (H.L.) 43, per Lord Watson; Jopp *v.* Johnston's Tr., 1905 (O.H.), 13 S.L.T. 522; Menzies on Trustees, 2nd ed., 1289 and 1293 *et seq.*, and note 1, p. 67).

Truster or beneficiaries have no claim unless for an ordinary ranking in the sequestration.

(*a*) Where trust funds, etc., immixed with bankrupt's own and *indistinguishable* (but see Menzies on Trustees, 2nd ed., 1290, 1293, and 1300 *et seq.*); or

(*b*) Where bankrupt has applied trust funds for his own purposes.

Statutory Exceptions—

Friendly Societies funds or *Savings Bank* funds in hands of a bankrupt officer must be paid over on demand in writing by two trustees or other authorised person (Friendly Societies Act, 1896, s. 35; Savings Bank Act, 1863, s. 14).

In these cases a petition may be presented to Lord Ordinary to have funds removed from sequestration (s. 99).

13. Property of bankrupt's wife.

A. *Under Married Women's Property Act*, 1881.

If the wife's property is distinguishable from that of bankrupt, and has neither been lent nor entrusted to her husband, and she can prove ownership, the trustee has no claim [1] (s. 1 (3)).

[1] For property which she has lent or entrusted to her husband, or which has become immixed with his funds and has therefore fallen to the trustee, the wife will rank as a *postponed* creditor on any surplus estate after ordinary creditors are satisfied (M.W.P.A. 1881, s. 1 (4)). It has

This Act applies to—

(*a*) *Marriages subsequent* to 18th July 1881 (s. 1 (1)); and

(*b*) *Prior Marriages.*

1. If provisions of Act have been adopted by mutual deed (s. 4); or
2. Where not so adopted, only in respect of property acquired *subsequent* to above date, and only if a reasonable provision has *not* been made for the wife by irrevocable deed prior to said date (s. 3).

B. *The following applies* in other cases—

Under Common Law.

Only where *jus mariti* is excluded, is the trustee barred from making claim.

In other cases (generally speaking) the husband's trustee takes moveables and revenue from heritage (Bell's *Prin.*, s. 1547).

Under Conjugal Rights Amendment Act, 1861.

A married woman is entitled to a *reasonable provision* for support of herself and family out of property belonging to her claimed by her husband's trustee, *provided* a claim be made therefor prior to her husband or the trustee obtaining possession (s. 16).

Under Married Women's Property Act, 1877.

Wages or earnings of wife's personal occupation or trade carried on in her own name, acquired subsequent to 1st January 1878, are excluded from trustee's claim (s. 3).

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been held that furniture which had belonged to the wife before her marriage and had been taken by her to the house in which she and her husband lived after marriage, had not been immixed with her husband's funds, or lent or entrusted to him, in the sense of the Act (Adam *v.* Adam's Tr., 1894, 21 R. 676).

If the bankrupt has *sold* corporeal moveables belonging to his wife as *separate estate* she is entitled to rank for the price along with his other creditors (Montgomery *v.* Hart, 1845, 7 D. 1081). If his stock-in-trade has been enhanced in value by her exertions she can claim on his estate for the amount of such enhancement along with his other creditors (per Lord Shand in Ferguson's Trs. *v.* Willis, Nelson & Co., 1883, 11 R. at p. 272). As to loan to husband, see further, p. 45; as to landlord's hypothec over wife's furniture, see p. 77.

C. *Policies of assurance* on husband's life *ex facie* for behoof of wife or children are excluded from trustee's claim under Married Women's Policies of Assurance Act, 1880 (s. 2).

Provided—If effected,

(1) To defraud creditors ; or

(2) Within two years of bankruptcy,

the trustee can claim *repayment of premiums* out of proceeds.

14. Property alienated under dispositions challengeable (see also p. 8).

Trustee may challenge the deed and recover the property for the creditors (ss. 8, 9, and 150) ; *e.g.*

(*a*) Gratuitous and voluntary alienations during insolvency (Bell's *Com.*, ii. 184 ; Act 1621, c. 18 ; B.A., s. 8 ; see p. 8).

(*b*) Fraudulent preferences to creditors during insolvency (Bell's *Com.*, ii. 226, and Act 1696, c. 5 ; see p. 9).

(*c*) *Testamentary* deeds.[1] These are revocable by the grantor, and on his bankruptcy the power of revocation passes to the trustee for the creditors. The deed creates a mere *spes successionis*, not a *jus crediti*, in the prospective beneficiaries (Forrest *v.* Robertson's Trs., 1876, 4 R. 22).

(*d*) Dispositions by bankrupt for his own behoof (Elliot *v.* Elliot's Trs., 1894, 21 R. 955).

(*e*) *Post-nuptial* settlements [1] *in favour of a wife*

(*a*) if granted during *insolvency ;*

(*b*) if granted during *solvency* and to take effect *during lifetime* of grantors (Dunlop *v.* Johnston, 1865, 3 M. 758 ; affirmed (H.L.) 1 S.C. App. 109) ;

(*c*) *quoad excessum* if granted during *solvency* and to take effect *after death* of grantor (see p. 8) (Melville *v.* Melville, 1879, 6 R. 1286) ; and

[1] See *The Property of Married Persons*, by David Murray, LL.D., ch. vi., and Married Women's Property (Scotland) Act, 1920, s. 5. This section declares all donations *inter virum et uxorem* to be irrevocable, but it takes effect as regards donations made prior to the passing of the Act only as from 23rd December 1921. Consequently revocable donations made prior to the passing of the Act, although during solvency and to take effect after the death of the grantor, may be challenged up to that date.

(*d*) in any case if completed within a year and a day before the date of the sequestration of the donor (Married Women's Property (Scotland) Act, 1920, s. 5).

NOTE.—*Ante-nuptial* settlements [1] are as a rule effectual against the trustee if irrevocable and reasonable, even though granted during insolvency. Marriage is deemed a "true, just, and necessary cause" (Watson *v.* Grant's Trs., 1874, 1 R. 882; M'Lay *v.* M'Queen, 1899, 1 F. 804), but *post-nuptial* settlements on a wife as above are only effectual if granted during solvency and to take effect after the death of the grantor, and then to the extent of a reasonable provision only (Fraser, ii. 1348 and 1500; Goudy, p. 293; Learmonth *v.* Miller, 1871, 10 M. 107; affirmed 2 R. (H.L.) 62; Craig *v.* Galloway, 1861 (H.L.), 4 Macq. 267).

(*f*) *Post-nuptial* settlements [1] by an *insolvent* father in favour of his children (Dawson *v.* Thorburn, 1888, 15 R. 891).

NOTE.—The position of children is more favourable than that of wives. Provisions by a *solvent* parent are effectual if a *jus crediti* has been constituted or property actually transferred in his lifetime (see p. 8) (Geddes *v.* Waddell, 1836, 14 S. 1084; Morrice *v.* Sprot, 1846, 8 D. 918).

15. Property under ineffectual diligence.

Vests in the trustee in sequestration (*post*, p. 82).

CREDITOR'S PREFERENCES.

1. Securities which prevail over trustee's title.

In which case the trustee can only claim the subject of the security *upon paying the debt* secured, or only to the extent of any reversion after satisfying said debt.

[1] See note 1, p. 74.

A. Securities Granted by Bankrupt and not Challengeable: see p. 74 (14). These may be

1. *Over heritable estate.*
   Absolute disposition with back-bond, or bond and disposition in security, duly recorded.[1]
2. *Over moveable estate.*
   (*a*) Assignation, duly intimated or registered as case may be; or
   (*b*) Pledge (which is based upon express or implied contract. Actual possession of the subject is essential).

B. Tacit Hypothecs.

1. *Superior*, for the last or current feu-duty (see s. 97 (2)).
   Covering—
   Crop and stock in *agricultural* subjects.
   Invecta et illata (see below) in *urban* subjects (Bell's *Prin.*, s. 698).
2. *Landlord, for rent* (see s. 115).[2]
   (*a*) *Agricultural subjects.*
   Only where land *not exceeding two acres* in extent (Hypothec Abolition Act, 1880, s. 1).
   Covering—
   (*a*) *Crop*, for rent of year of which it is the produce (Bell's *Prin.*, s. 1239).
   (*b*) *Invecta et illata* (see below) *for current year's rent*, and also if sequestration within three months of last conventional term of payment of same, *the arrears of past year's rent* (Bell's *Prin.*, s. 1240).
   (*b*) *Urban subjects.*
   Covering invecta et illata, i.e. (in general terms) the furniture and plenishing or stock-in-trade

[1] Where a creditor has a security over the whole of the debtor's estate and another creditor has a security over a part of that estate, the first creditor is called a *catholic* creditor and the other in relation to him a *secondary* creditor. The equitable rule is that the catholic creditor must either first exhaust the part of the estate over which he alone is secured, or, if he go against the other part, he must assign to the secondary creditor his security over the separate subject (Nicoll's Tr. *v.* Hill, 1889, 16 R. 416). See exceptions in Goudy, 4th ed., p. 508.

[2] The landlord has no preference unless by virtue of his hypothec. If the trustee intromits with the subject of hypothec he becomes liable for the rent (see note 1, p. 71).

which to all *appearance* is the property of the tenant (Hunter on *Landlord and Tenant*, vol. ii. p. 374), including property under contract of *hire-purchase* by the bankrupt [1] (Singer Co. *v.* Hunter, 26 S.C.R. 172; Bell's *Prin.*, ss. 1275, 1276), but not property on *gratuitous loan* (Bell *v.* Andrews, 1885, 12 R. 961); unless such forms the principal part of the furnishing, in which case it is subject to the hypothec (Ross, 1912, 28 S.C.R. 347; M'Lauchlan *v.* Wilson, and Johnstone's Exrs. *v.* Wilson, 1913, 1 S.L.T. 378). If the furniture in the bankrupt's house belongs to his *wife* it is not subject to the diligence of his creditors (M.W.P.A. 1881, s. 1 (3)), but it would be subject to the landlord's hypothec as having been held out as belonging to the tenant; [2] also covering goods sold by bankrupt *but undelivered*, even although price paid (Little *v.* M'Connell, 47 S.L.R. 214).

In the case of small dwellings under the House Letting Act, 1912, bedding material, tools and implements of trade, and also furniture and plenishing, chosen by the tenant to the value of £10 as per sheriff's officer's inventory, are *exempt* from landlord's hypothec (1 & 2 Geo. 5, c. 53, s. 10).

In security for current year's rent, and also, if sequestration for rent taken out within three months of the last conventional term of pay-

[1] An article on hire-purchase has been held liable only for rent of period during which it was in the bankrupt's house (Ingram *v.* Singer Co., 26 S.C.R. 156). It appears that even if the hired articles have been removed the landlord may insist on their restoration (Bell's *Com.*, ii. 30, note; Wauchope *v.* Gall & Ross, 1805, Hume, 227).

[2] Assuming the wife can prove ownership of furniture which has been sold by the landlord under hypothec and that she has received an assignation of the landlord's rights against the bankrupt, she will be entitled to a preference in respect thereof to the extent of any furniture belonging to the bankrupt subject to the hypothec which has not been sold by the landlord, or, if sold, of any part of the proceeds of such remaining after satisfaction of the rent secured, and to an ordinary ranking for any balance of her claim. The transfer of furniture belonging to the wife to a house occupied by her and her husband does not necessarily mean that it is "lent or entrusted" in the sense of the M.W.P. Act (see p. 72, note 1).

ment of same (usually 15th May), *the arrears of past year's rent* (Bell's *Prin.*, s. 1277).[1]

NOTE.—The landlord's claim is, in the event of competition, postponed to deathbed and funeral expenses, local rates, and also, apparently, to wages and salaries; but as to wages of a domestic servant, see Davidson *v.* Calder, 1 S.C.R. 30. See also Dobbie *v.* Thomson, 1880, 7 R. 983; and as to burgh rates, Magistrates of Helensburgh *v.* Semple, 1903, 19 S.C.R. 31. The *pari passu* ranking of preferable claims *inter se* (s. 118 (2)) would not appear to affect the individual preferences in relation to the landlord (s. 115).

3. *Law agent, for expenses* (Bell's *Prin.*, s. 1388).
   Covering " costs " recovered for client in a litigation. The law agent may get *decree* for costs *in his own name*. He may also obtain a *charge* from the Court upon any *property preserved or recovered* for his client, in security of his taxed expenses (Law Agents and N.P.A., 1891, s. 6).

4. *Seamen for wages* (Bell's *Prin.*, s. 1400; Merchant Shipping Act, 1894, ss. 156 and 167).
   Covering ship and freight, but not cargo.

5. *Shipbuilders, for repairs* (Bell's *Prin.*, s. 1398).
   Covering ship as security for repairs at a *foreign port*. There is no hypothec for repairs at a home port, but see below, " Liens, 1."

C. RETENTION OR LIEN.[2]

Effectual only when moveables are *in actual possession* of creditor.

Examples—

1. *Special liens* (i.e. *in security of specific debt*).
   Workmen and manufacturers, over *commodities* for *labour* and *skill* expended thereon (Bell's *Prin.*, s. 1430).
   Carriers, over *goods* carried, for *carriage* (Bell's *Prin.*, ss. 1422–25).

[1] The hypothec does not operate until the year for which the rent is payable has begun to run. The trustee is therefore entitled, between the 15th May (term of payment) and 28th May (removal term), on payment of rent *actually due*, to remove the furniture from the premises (Sawers *v.* Kinnair, 1897, 25 R. 45).

[2] As to unpaid seller's lien, see p. 68.

Innkeepers, over *luggage* of guest, for *account due* (Bell's *Prin.*, s. 1428).

Shipowners, over *cargo*, for freight (Bell's *Prin.*, ss. 1422–25).

Salvage parties, over *property saved*, for *salvage* (Bell's *Prin.*, s. 1427 ; Merchant Shipping Act, 1894, s. 552).

Shipbuilder, over *ship at home port, for repairs.*

Accountants and factors, over *papers*, etc., for *charges and outlays* (Robertson *v.* Ross, 1887, 15 R. 67).

2. *General liens* (i.e. *in security of all debts due*).

Based upon express or implied agreement or usage of trade.

Mercantile factors, over principal's *goods*, or the *proceeds* thereof if sold (Bell's *Prin.*, s. 1445 *et seq.*).

Bankers, over *bills*, etc. (unless deposited for a purpose inconsistent with right of lien) for *sums due* by customers (Bell's *Prin.*, s. 1451).

Marine insurance brokers, over *policies of insurance* and (in some cases) over *sums recovered* from underwriters (Bell's *Prin.*, s. 1452 ; Bell's *Com.*, ii. 115).

Law agents, *vide* p. 83.

D. COMPENSATION (*i.e.* the extinction of mutual debt) (Goudy, ch. xliv. ; Bell's *Prin.*, 572 *et seq.*).

Competent provided there is—

1. *Proper concourse* of debit and credit, *prior to date of* sequestration ; and
2. Parties are debtor and creditor, *in the same right.*

As to compensation between firm debts and private debts of partners, see Goudy on Bankruptcy, ch. xlvi. s. 5, also Rights in Security, by Gloag and Irvine, p. 324 *et seq.*

The right to demand payment and the right of compensation are commensurate, and the following three legal principles must be kept in mind :—

1. A firm is not liable for the individual private debts of partners.
2. Each partner is liable for the firm's debts ; and
3. A partner is not a creditor in a debt due to the firm.

Applying these principles to the four possible cases we have the following results :—

Case (*a*). *Where a firm sues its debtor for a firm debt.*

The debtor *cannot* plead compensation of a private debt due by one of the partners, because the firm is not liable therefor.

Case (*b*). *Where a firm's creditor sues the firm for a firm debt.*
The firm *can* plead compensation in respect of a private debt due by its creditor to one of its partners. This has been upheld on the ground that the partner is entitled to assign his debt to the firm and that there is an assumption that such assignation had taken place prior to sequestration (Mitchell *v.* Canal Basin Co., 1869, 7 M. at p. 487). It is obvious, however, that the assumption may be overthrown by proof that the partner objects to the assignation, and in another case where such objection was raised it was held in the Outer House that the true foundation for the plea of compensation was the liability of the partner *singuli in solidum* for his firm's debts. The case was appealed, but the appeal was dismissed on a technicality, the Court reserving its opinion as to the merits of the question (Raleigh *v.* Hughson & Dobson, 1861, 23 D. 352).

Case (*c*). *Where a partner sues his debtor for a private debt.*
The debtor *can* plead compensation of a debt due to him by the firm of which his creditor is a partner, on the ground that the partner is liable *singuli in solidum* for his firm's debts (Russell *v.* Macnab, 1824, 3 S. 63).

Case (*d*). *Where a partner's creditor sues him for a private debt.*
The partner *cannot* plead compensation of a debt due by his creditor to the firm, because he (the partner) has no title to sue for such debt. But where the firm is dissolved (*otherwise than by bankruptcy*) he may compensate the share in the debt to which he thus acquires a title.

NOTE.—When the partner is being sued for a *firm's debt* he can, of course, set off the debt due to the firm. In the case of a *sole partner* there is no distinction between private and business debts.

E. EFFECTUAL DILIGENCE.[1]

(*a*) *Adjudication of heritable property.*
Trustee is excluded if adjudication has been made effectual *one year and one day* prior to date of sequestration,

[1] In the case of diligence against the heritage of a deceased debtor, the creditors of the deceased have a statutory preference on his heritable estate over creditors of the heir for *three years* from the date of the ancestor's death. The Bankruptcy Act, s. 97, declares that "the act and warrant of

and has been followed in the case of feudal subjects by infeftment (Act 1661, c. 62 ; Conveyancing Act, 1874, ss. 4 and 62 ; B.A., s. 103).

Adjudications *within the year and a day are ineffectual*, but first adjudger will have a *preference in ranking* for *expense* of making adjudication effectual (Goudy, 4th ed., p. 533 ; *vide* p. 84).

(*b*) *Poinding of the ground.*

Trustee is excluded if poinding brought to a sale *sixty days prior* to date of sequestration (s. 114).

As to preference in ranking if poinding cut down, *vide* p. 84. As to competition with local rates, see Campbell *v.* Edinburgh Parish Council, 1911 S.C. 280.

(*c*) *Action of maills and duties.*[1]

Trustee is excluded even though summons is served subsequent to sequestration (Hepburn *v.* Grant, 25 S.C.R. 338. See Conveyancing Act, 1874, s. 55, restoring the rule of common law).

(*d*) *Arrestment of moveables* (ss. 10 and 104).

Used in the hands of a *third party.*

Trustee is excluded if arrestment used outwith sixty days prior to notour bankruptcy and decree of furthcoming obtained prior to completion of trustee's title.[2]

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confirmation shall operate in their favour as complete diligence." Consequently, if the act and warrant of the trustee is within the said three years, the ancestor's creditors have a preference in the sequestration over the heir's creditors. The words "complete diligence" in s. 97 cannot, however, be construed as importing a poinding of the ground in favour of the ancestor's creditors (Traill's Trs. *v.* Free Church of Scotland, 1915 S.C. 667, per Lord Cullen). *Gratuitous* alienations during the said period can be set aside in competition with diligence of the ancestor's creditors, and *all* voluntary dispositions by the heir made within *one year* after the death of ancestor are reducible at the instance of the ancestor's creditors (Act 1661, c. 24, s. 97 ; M'Alpine *v.* Lang, 1885, 12 R. 604).

In the case of diligence against the moveable estate of a deceased debtor, the creditors of the deceased have a preference, by statute and at common law, over the creditors of deceased's nearest of kin for one year and one day after the decease (Act 1695, c. 41).

For further observations on the rights of ancestor's creditors see Pontz *v.* Menzies' Tr., 1915, 1 S.L.T. 443 ; Traill's Trs. *v.* Traill's Crs., 1915 S.C. 667.

[1] A superior cannot attach the rents by an action of maills and duties in security of feu-duties in arrear but he may poind the ground (Nelson's Trs. *v.* Tod, 1896, 23 R. 1000 ; Scottish Heritages Co., 1885, 12 R. 550).

[2] When arrestment has been laid on *outwith sixty days* of notour bankruptcy, *but not completed*, and property consequently vests in the

(*e*) *Personal poinding of moveables* (ss. 10 and 104).
Used in the hands of the *debtor*.
Trustee is excluded if poinding executed outwith sixty days prior to notour bankruptcy and completed by sale prior to completion of trustee's title.[1]

(*f*) *Crown's diligence.*
Trustee is excluded if diligence is executed *prior* to his *confirmation* (Crown *v.* Magistrates of Inverness, 1856, 18 D. 366, per Lord Mackenzie).

2. Securities subordinate to trustee's title.

In which case the trustee takes the subject of the security, but must give the creditor a preference in the ranking.

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trustee, the creditor has a claim for a preference in the ranking (see *post*, p. 83).

The same rule applies to poindings (ss. 10 and 104; Mitchell *v.* Scott, 1881, 8 R. 875).

Where furthcoming has been got on an arrestment used *within* the sixty days prior to notour bankruptcy, but *outwith* sixty days of sequestration (and therefore not cut down under s. 104), the trustee, as representing the general body of creditors, can claim a ranking for the whole creditors *pari passu* with the arresting creditor on the subjects, or the proceeds thereof if sold, thus practically accomplishing the reduction of the preference, but the arresting creditor has a preference over the funds arrested to the extent of the expense of the arrestment (Galbraith *v.* Campbell's Trs., 1885, 22 S.L.R. 602, per Lord Kinnear (Ordinary); Nicolson *v.* Johnstone & Wright, 1872, 11 M. 179, per Lord Deas). As to what expenses are included in the preference, see Swiss Chocolate Co. *v.* Peacock, 1914, 2 S.L.T. 312; Aitken's Sequestration, 31 S.C.R. 27 [arrestment on dependence].

The above provisions as to cutting down diligence in a question with the trustee's title in Scotland has no operation in England, and the English law as to *relation back* applies only to cases of English bankruptcy. A trustee in a Scotch sequestration, therefore, takes estate belonging to the bankrupt situate in England subject to all attachments which are of prior date to the date of sequestration (Galbraith *v.* Grimshaw & Baxter, [1910] 1 K.B. 339; affd. H.L. 23rd June 1910).

Where the estates of a deceased debtor are sequestrated within seven months of his death, diligence for any prior debt, if within period of sixty days prior to death or subsequent thereto, and preferences granted by debtor not completed prior to said period, and any confirmation of executor creditor after the debtor's death, are of no effect as against the trustee in sequestration. Apart from this, sequestration has, of course, the effect of cutting down diligences had during sixty days prior to date of sequestration in the case of deceased as of living debtors (ss. 108, 104).

[1] Note *supra*.

INHIBITIONS.

This is a *prohibitory diligence* only, and does not affect the vesting of the estate in the trustee in sequestration (ss. 97 (2), and 100).

Preference must be given to creditor *in the ranking*. The adjudication constituted by the sequestration in favour of the trustee is one *for the benefit of all the creditors, according to their respective rights and preferences* as at the date of sequestration, and is therefore available to the inhibitor to support his claim to a preference over posterior creditors; prior creditors must be neither hurt nor benefited (Baird & Brown *v.* Stirrat's Trs., 1872, 10 M. 414, per L. P. Inglis).

POINDING OF THE GROUND NOT BROUGHT TO A SALE SIXTY DAYS PRIOR TO DATE OF SEQUESTRATION.

The creditor has a *preference in the ranking* for current half year's interest and arrears for preceding year (s. 114), and such limited preference can be obtained by a poinding, *even after sequestration*, unless the trustee defeats this course by removing the moveables before they are poinded (Dick's Tr. *v.* Whyte's Tr., 1879, 6 R. 586).

ARRESTMENTS NOT FOLLOWED UP.

The creditor has a *preference in the ranking* if arrestment has been used outwith sixty days prior to notour bankruptcy and there has been no undue delay in following it up (Mitchell *v.* Scott, 1881, 8 R. 875; Henderson *v.* Grant, 1896, 23 R. 659; Bendy Bros. *v.* M'Allister, 1910, 26 S.C.R. 152).

If used *within* the sixty days it is *cut down*.

PERSONAL POINDINGS NOT EXECUTED.

Same rule as in case of arrestments, *supra*.

LAW AGENT'S LIEN OVER TITLE-DEEDS.

The law agent has a *general lien* (*ante*, p. 79) over titles and other papers held for his client (the bankrupt), but is bound to deliver them to the *trustee in sequestration*, his security being reserved to him in the ranking (Renny, 1847, 9 D. 619). The lien can be maintained not only against the bankrupt but also against the bankrupt's *heritable creditors*, but to render it effectual—

(*a*) The lawyer must be holding *as agent for the bankrupt;*

(*b*) The bankrupt must have been in a position to give a good title of possession;

(*c*) The deeds must have come into the agent's hands in the ordinary course of professional duty;

(Renny, *supra*; National Bank *v.* White & Park, 1909, 3 S.C. 1308. See also Boyd *v.* Turnbull & Findlay, 1911, 2 S.L.T. 77).

3. Preferable Debts [1] ranking in the following order :—

A. Sequestration Expenses.[2]

In the event of competition these would be preferred *inter se* in the following order :—

(*a*) Petitioning or concurring creditor's expenses prior to election of the trustee (s. 40), subject, of course, to the bare cost of realising sufficient funds to meet same.

(*b*) Expenses incurred by the trustee (see, *in re* company liquidator, Trueman, 14 Eq. 278; Whigham *v.* Walker, 1907, 44 S.L.R. 10).

(*c*) Trustee's own remuneration.

B. Expenses of Ineffectual Diligence.

Where an *arrestment* or *poinding* is cut down by sequestration (see above) a preference is given out of funds attached for the *bona fide* expenses of such diligence (s. 104).

A similar preference is apparently given in the case of adjudications cut down (Goudy, 4th ed., p. 533; *vide* p. 80).

C. Deathbed and Funeral Expenses (s. 118 (5); Bell's *Prin.*, s. 1403).

The common law preference attaching to above (which includes "family mournings") is not disturbed by the Bankruptcy Act.

D. Privileged Debts under the Bankruptcy Act ranking *pari passu* (s. 118).[3]

(*a*) *Rates and taxes*, i.e. *county rates, poor and school*

[1] These may be paid forthwith and necessity for formal oath dispensed with (s. 118 (3)).

[2] It may be taken that sequestration expenses are preferable to expenses of diligence, seeing that wages have been held to be so preferred and that sequestration expenses are preferable to wages.

[3] In the event of competition certain *privileged debts* are preferred even to secured debts. Thus, deathbed and funeral expenses, imperial and local taxes, and wages and salaries are preferred to debts secured by diligence (*e.g.* an arrestment), while the two former are also preferred to debts secured by assignation (*e.g.* life policy), and the first named even to debts with real security (Goudy, 4th ed., pp. 513-15). As to competition of privileged debts with landlord, *vide* p. 77; as to telephone dues, see note 3, p. 85; as to rates due under ministers' widows' fund, see note, p. 86.

rates,[1] *and burgh rates* which have become due within twelve months preceding **date of award of sequestration** (or date of death in case of sequestration of a deceased's estate), but not more than one year's assessment (s. 118 (1) (*a*)).[2]

(*b*) *Imperial taxes*,[3] e.g. *land tax, and property or income tax* for one year to 5th April next before the said date (s. 118 (1) (*a*)).

(*c*) *Wages and Salaries.*

(1) *Clerks and servants* for wages or salary for services rendered during *four months* prior to said date not exceeding £50 each (s. 118 (1) (*b*)).[4]

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[1] It had been held that poor and school rates are preferable even to a bondholder (Forsyth's Trs., rep. *Glasgow Herald*, 7th March 1907).

[2] It is difficult to determine how far the preferences accorded by s. 62 (5) of the Local Government Act, 1889, s. 88 of the Poor Law Act, 1845, and s. 370 of the Burgh Police Act, 1892, are abrogated by s. 118 of the Bankruptcy Act. The preference in any case cannot extend beyond one year's assessment.

[3] The preference does not extend to other Crown debts, *e.g.* Post Office telephone dues (Admiralty *v.* Blair's Trustee, 1915, S.C. 247, overruling Lord Advocate *v.* Galbraith, 1910 (O.H), 47 S.L.R. 529). It is expressly provided by s. 147 of the Bankruptcy Act that the Act shall not extend to *discharge* any Crown debt unless the Treasury shall consent to such discharge, so that when the sequestration is at an end and the bankrupt is discharged his liability for payment of Crown debt still remains (*ibid.* p. 266, per Lord President). The question arises as to whether the Crown's preference at common law [or under the Taxes Management Act, 1880, s. 88 (1), and Revenue Act, 1884, s. 7 (2)] for twelve months' arrears is affected by the Bankruptcy Act, 1913. The terms of section 118 (1) (*a*), limiting the preference for Imperial taxes to one year's assessment [and that the assessment up to 5th April preceding the award], are inconsistent with the retention of the former preference. It has been held that these are preferable to the landlord's hypothec (Hatton *v.* Grant, 1913, 1 S.L.T. 468, per Sheriff Gardner Millar, K.C.). See note 2, p. 65.

[4] The secretary of a limited company is not a clerk or servant in this sense unless he devotes his whole personal time to the duties (Clyde Football Co., 1901, 8 S.L.T. 328; Cairney *v.* Back, [1906] 2 K.B. 746); nor a managing director (Newspaper Syndicate, Ltd., 1900, 16 T.L.R. 452; see also *In re* Beeton & Co., Ltd., Ch. D. 1913, *Accountant's Magazine*, p. 420). Commission due on travellers' orders seems to be entitled to a preference (*In re* Klein, 1906, 22 T.L.R. 664). The common law preference to domestic servants is not expressly preserved by the Act, and apparently such employees will now come under the general category of "servants."

(2) *Workmen* and labourers for services rendered (whether on time or piecework) during *two months* prior to said date, not exceeding £25 each [s. 118 (1) (*c*)].

Provided that when a portion of the wages of a *labourer in husbandry* are payable by contract in a lump sum, the whole, or such part of such sum as the Court may decide is *proportionate* to period of service up to said date, shall be entitled to a preference (*ibid.*).

(*d*) *Workmen's Compensation.*

The amount, *not exceeding* £100 in any individual case, of any compensation due to a workman under the Workmen's Compensation Act, 1906, and *accrued prior to the said date* (B.A., s. 118 (1) (*d*)). This provision does not apply where the bankrupt has insured against employer's liability (see note, p. 67), even although the insurance company is unable to pay (Rodgers, 1912, 28 S.C.R. 53). But if the insurance company is liquidated prior to the employer's bankruptcy the claim is against the employer (Thrashbush Coal Co. (in Liquidation) *v.* M'Inally, 1915, 1 S.L.T. 430). No mention is made of law expenses awarded to claimant. These would apparently receive an ordinary ranking. But see Sched. II. 14.

(*e*) *National Insurance Contributions.*[1]

All contributions due by bankrupt in respect of employed contributors or workmen in an insured trade during *four months* prior to said date (B.A., s. 118 (1) (*e*)).

As to *funds of friendly societies and savings banks*, see *ante*, p. 72.

4. Cautionary Obligations (see Goudy, 4th ed., p. 561).

(*a*) *Creditor ranks upon estate of each bankrupt cautioner—*

For the full amount of the debt to the extent of recovering not more than 20s. per £ over all (Bell's *Com.*, i. 368).

[1] *Rates due under Ministers' Widows' Fund Act* (by clergymen of the Established Church of Scotland), together with the interest thereon, are declared to be preferable to all other claims, Ministers' Widows' Fund Act, 19 Geo. 3, c. 20, s. 19 (see Bell's *Com.*, ii. 151). In the event of competition this claim would probably rank before the preferential payments under the Bankruptcy Act.

(*b*) *Bankrupt co-cautioners may rank inter se* to equalise their contributions, but only if creditor has not already ranked. *There can be no double ranking* (*ibid.* 365).

Provided—

1. *Where the creditor has ranked* upon the co-cautioners' estates but has not exhausted his ranking upon any one or more of these estates, any cautioner or cautioners paying to the creditor more than their share of the debt are entitled to get the benefit of the creditor's unexhausted ranking (Goudy, 4th ed., p. 566; Bell's *Com.*, i. 369 (2)), and receive among them the balance of the dividend which the creditor did not (in order to make up 20s. per £ on his debt) require to draw. The amount which each cautioner may be entitled to out of this fund will depend upon—
   (1) The amount of their liabilities *inter se* as per the bond; and
   (2) Whether any cautioner has failed to pay the creditor even his rateable proportion of the bankrupt debtor's deficit, such failure, in some cases at least, having to be made good proportionately by the other cautioners before the amount of their relief as above can be determined.
2. *Where one of several* equal *cautioners is solvent and pays the whole debt* he is, on principles of equity, entitled to rank on *each* of the bankrupt co-cautioners' estates for *half the amount* so paid in order to recover his just relief (Bell's *Com.*, i. 371 and 373). If two cautioners are solvent and pay the debt they would *jointly* have a similar ranking for one-third. If three, then a ranking *jointly* for one-fourth and so on. For a very full and clear statement of the law, see Gloag and Irvine on *Rights in Security and Cautionary Obligations*, pp. 836 to 838.

(*c*) *The cautioners may, upon paying the debt, rank upon the principal debtor's estate* (s. 52).[1] Further, while *there can*

[1] But a payment made *to account* by a *cautioner* may or may not entitle him to rank for that portion in the place of the creditor. If the guarantee, although limited in amount, is against *ultimate loss* (*i.e.* the loss remaining after the exercise of any other remedies the creditor

be no double ranking (Bell's *Com.*, i. 365), if the creditor has ranked but has not drawn the full dividend from the debtor's estate, and the cautioner pays to the creditor the balance of the debt, he will be entitled to draw the future dividends on the amount of the creditor's claim either in his own or the creditor's name (Bell's *Com.*, i. 365 ; Goudy, 4th ed., p. 568 ; see also p. 566).

5. Partnership Debts.

(*a*) *Partnership creditors rank upon partnership estate* to exclusion of private creditors of partners (Partnership Act, 1890, ss. 4 and 9).[1]

(*b*) *Partnership creditors thereafter rank upon each partner's estate pari passu* with private creditors *for the balance* [2] of debt unpaid by firm, to draw in all not more than 20s. per £ (B.A., s. 62).[3]

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may have) the *cautioner* cannot demand an assignation of the *creditor's* right to rank, and the latter, although he has received a portion of the debt, may rank on the debtor's estate for the full debt to the extent of recovering by way of dividend the unpaid portion (Harvie's Trs. *v.* Bank of Scotland, 1885, 12 R. 1141 ; Logan's Sequestration, 25 S.C.R. 160). If, however, the guarantee simply covers losses up to a specified amount, then on payment of that amount the cautioner is entitled to rank for that portion of the debt in place of the creditor (Veitch *v.* National Bank of Scotland, 1907, S.C. 554). In both cases the debtor's estate is thus called upon to bear a ranking for the full amount of the debt.

Where, however, the payment to account is made by the cautioner before the date of sequestration out of funds *provided by the debtor*, or having been made out of his own funds is *repaid* to him by the debtor, a reservation in the deed of guarantee will not entitle the creditor to rank for the full debt in a subsequent sequestration of the debtor's estate. (Mackinnon's Tr. *v.* Bank of Scotland, 1915, 9 S.C. 411).

[1] Where one person carries on business under a company name, on his bankruptcy no distinction is made between his private and his trade creditors (Reid *v.* Chalmers, 1828, 6 S. 1120).

[2] It falls to the *trustee* to put a value on the estate of the firm, and estimate the deficiency (s. 62).

[3] Where a partner has *overdrawn* his account with the firm, the trustee for the firm's creditors is entitled to rank on the partner's estate for the sum due by such partner notwithstanding the ranking of the firm's creditors for their deficiency, but the deficiency must be ascertained after crediting in the firm's estate the estimated dividend the partner's estate can pay on the partner's overdraft (see Goudy, 4th ed., pp. 577 and 580 ; Boyd Kinnear on Bankruptcy, p. 79 ; and case Dunlop *v.* Speirs, 4th July 1776, affd. 2nd May 1777, M. 14615, and App. Soc. No. 2). For the pur-

(*c*) *Partners may thereafter be entitled to rank inter se* as cautioners for the partnership debts in order to adjust their contributions towards the debt, but only if the creditor has not ranked or has not exhausted his ranking (see under "Cautionary Obligations" above).

As to voting see p. 34.

PUNISHMENT OF FRAUDULENT DEBTORS.[1]

(Sections 178 and 182.)

The debtor is deemed guilty of a crime, and on conviction before Court of Justiciary, or before Sheriff and a jury, may be *imprisoned* for any time not exceeding *two years*, or by the Sheriff summarily for any time not exceeding *six months, with or without hard labour*,

(*a*) In the following cases, unless he proves that he had no intent to defraud :—

(1) If he does not fully disclose his state of affairs to the best of his knowledge.

(2) If he does not deliver all property, books, etc., or deal with same according to trustee's directions.

(3) If after or within four months prior to presentation of petition he conceals property or conceals or mutilates any books or papers or is privy thereto.

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pose of determining the amount of each overdraft it is probable that the balance of the partner's account in the last approved balance-sheet would be taken subject to any actual lodgments and withdrawals of cash since the date of that balance-sheet.

To relieve a retired partner from liability the following is necessary :—

(1) *In reference to debts existing at his retiral*—

The consent of the creditors, express, or implied from subsequent course of dealing (Partnership Act, 1890, s. 17 (3)).

(2) *In reference to debts subsequently incurred*—

(*a*) *As to creditors on the books*—

Express notice of retiral to each creditor (*ibid.* s. 36), or evidence that creditor was aware of retiral (Aytoun *v.* Dundee Banking Co., 1844, 6 D. 1409).

(*b*) *As to new creditors*—

Notice of retiral in the *Edinburgh Gazette* (*ibid.* s. 36 (2)).

A deceased partner's estate is not liable for debts incurred subsequent to his decease (which is deemed to be a public fact) (Bell's *Com.*, ii. 529).

A person who is admitted as a partner to an existing firm does not thereby become liable for prior debts (*ibid.* s. 17 (1)).

[1] If liable under any other Act or at common law the bankrupt or any creditor may be proceeded against thereunder or under the Bankruptcy Act, so that he be not punished twice (s. 181).

(4) If during same period he falsifies his books or papers.
(5) Or pledges, or disposes of otherwise than in ordinary way of trade, any property not paid for.
(6) If owing more than £200, he has not for previous three years (or from commencement of business) kept proper books.

(*b*) In the following cases :—
(1) If he knows a false claim has been made and for a period of one month fails to inform trustee thereof.
(2) If after or within four months prior to presentation of petition he attempts to account for his property by fictitious losses.
(3) If within said four months he fraudulently obtains property on credit and has not paid for same.
(4) If after or within four months prior to *award* of sequestration he prepares to abscond in order to avoid examination, or taking with him £20 of property which ought to be divided among the creditors, or fails, without excuse, to submit himself for examination.
(5) If, being insolvent, and with intent to defraud, he makes any gift or transfer of his property or creates any charge thereon.
(6) If, without excuse, he fails to lodge in process a state of affairs as ordered.
(7) If, while undischarged, he obtains credit to extent of £10 without disclosing that he is an undischarged bankrupt (s. 182).

If the trustee has reasonable grounds for suspecting that the bankrupt has been guilty of any offence under the Act he must report same to Lord Advocate (s. 180). If the Accountant has reason to suspect fraudulent conduct, he also is entitled to lay information before Lord Advocate (s. 161).

PUNISHMENT OF FRAUDULENT CREDITORS.[1]

(Sections 179 and 186.)

A creditor wilfully, and with intent to defraud, making a false *claim or affidavit or statement of account* is liable to same penalty as the bankrupt is under (ss. 178, 179), and for wilful falsehood in any *oath* made by him, he may be prosecuted (*a*) by Lord Advocate, or (*b*) by the trustee with authority of a majority of the creditors present at a meeting called for the purpose and the concurrence of

[1] Note 1, p. 89.

the Lord Advocate. Besides the awarded punishment he *forfeits*, for behoof of the other creditors, his whole interest in the estate, and such interest falls to be distributed under the sequestration or, if sequestration closed, by a process of multiplepoinding (s. 186).

III.—SUMMARY SEQUESTRATION.[1]

NOTE.—Subject to the special provisions set out below, the provisions of the Act as to ordinary sequestration apply also to summary sequestration (s. 174).

PRIMARY CONDITION.

That assets do not exceed £300 (s. 174).

PETITION.

BY WHOM ?

1. The *debtor* (s. 175 (1) and (3)).
   Accompanied by state of affairs, *subscribed* by himself, *specifying* particulars as in s. 77 (see p. 18).
   Without concurrence.
2. *Creditors duly qualified* (s. 175 (1)).
   I.e. one or more creditors aggregating £10 or upwards.
   Provided debtor *notour bankrupt* within previous four months.

TO WHOM ?

1. Sheriff of any sheriffdom in which debtor has resided or carried on business during year immediately preceding date of petition (s. 175 (1)) ; or
2. If said sheriffdom not known or debtor furth of Scotland —to Court of Session in the Bill Chamber (s. 175 (2)).

CITATION WARRANT.

Where petition is at instance of creditors.

Particulars as on p. 14, and in addition an order on the debtor to lodge *within six days* a state of affairs, as in case (1) above (s. 175 (4)).

[1] This supersedes the old cessio procedure, but any process of cessio initiated prior to 1st January 1914 is to proceed as if the Act had not passed (s. 191 (2)).

AWARD.

The Judge in awarding sequestration has a *discretionary* power [1] to direct that it *shall or shall not* proceed as a summary sequestration (s. 175 (5)).

(Intervening procedure as in case of ordinary sequestration (see pp. 16–23)).

EXAMINATION OF BANKRUPT.

Trustee applies to Sheriff orally within seven days of deliverance appointing him (s. 176 (1)).

Diet Fixed (see p. 23).

Note.—The examination takes place in *open* Court (s. 176 (1)).

Seven Days Prior to Examination (s. 176 (3)).

(1) *Notice to bankrupt* to attend.

(2) *Gazette notice.*

Stating—

(*a*) Trustee's name and designation.

(*b*) Day, hour, and place of bankrupt's examination.

(*c*) Day, hour, and place of second meeting.

(*d*) Last date for lodging claims.

(3) *Circulars* to creditors stating above particulars.

SECOND STATUTORY MEETING.[2]

Twenty-one days prior at least (s. 176 (4)).

Creditors' claims must be lodged.

Fourteen days prior at least (s. 176 (5)).

Trustee's adjudication completed.

List of claims and deliverances prepared.

Whole process open for inspection by bankrupt and creditors.

Ten days prior at least (s. 176 (5)).

Notice to any creditor whose claim has been rejected in whole or in part.

Three days prior at least (s. 176 (6, *a*)).

Notice of any objection to the trustee's deliverances by the bankrupt or any creditor to be posted to the trustee and creditor affected, and post office receipt obtained by objector.

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[1] Case where summary sequestration refused on ground of history leading up to bankruptcy with no assets (Mackay's Sequestration, 1918, 34 S.C.R. 152).

[2] Other meetings may be called by the trustee, or by any creditor with the consent of the commissioners, by notice specifying the business (s. 176 (12)).

Summary disposal of objections (s. 176 (*b*, *c*, and *d*)).

Oral application to Sheriff to fix diet therefor.[1]

Diligence issued (if desired) to bankrupt, trustee, or creditor to cite witnesses and havers. Second diligence may be granted.

Parties heard *vivâ voce*. Proof led (as may be allowed by Sheriff) and recorded (if desired by any of the parties).

Interlocutor stating findings in "fact" and in "law" and settling the ranking.

Appeals [2] (s. 166).

Within eight days of deliverance note of appeal to be lodged with and marked by Sheriff-Clerk.

Note of appeal and process transmitted to Bill Chamber Clerk.

Judgment by Lord Ordinary.[3]

Appeal to Inner House (if necessary).

At the meeting (s. 176 (7 and 8)).

The creditors may attend by themselves or their mandatories, but it rests with the *trustee and commissioners* to determine as to payment of a dividend. The following resolutions are competent:

1. To fix a date for payment of a first or final dividend.
2. To postpone payment of dividend to a date not later than three months after meeting.
3. Where adjudications are under appeal—to postpone declaration of a dividend until after appeals disposed of.

Post Office receipt for notice of objection (as above) must be produced at the meeting (s. 176 (6, *a*)).

Where there will be *no funds* for division the trustee may of his own accord, or under the direction of the creditors, report orally to the Sheriff and obtain an order in writing dispensing with further procedure in the summary sequestration (s. 176 (8)).

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[1] Diet may be adjourned from time to time (s. 176 (6, *b*)).

[2] Where proof has not been recorded the Sheriff's findings in "fact" are final, but his findings in "law" may be appealed against (s. 176 (6, *d*)).

[3] The Lord Ordinary or Inner House may remit to the Sheriff with instructions (s. 166).

PAYMENT OF FIRST DIVIDEND.

Trustee's accounts made up with relative vouchers (s. 176 (9)).

Meeting of commissioners held ten days at least prior to date fixed for payment of dividend (s. 176 (9)).

1. Law agent's account as taxed by Auditor of Sheriff Court produced.
2. Accounts audited, approved of, or modified and adjusted.
3. Trustee's remuneration fixed (subject to appeal as undernoted).

Appeals against deliverance fixing trustee's remuneration (s. 176 (9)).

To Accountant of Court.

By trustee, bankrupt, or any creditor.

Within six days after date of deliverance.

Parties heard *vivâ voce*.

Deliverance (which may contain a finding as to *amount and liability for* expenses, and is not subject to review).

State of ranking prepared.

SUBSEQUENT DIVIDENDS.

(Section 176 (10)).

Whenever funds are available the trustee and commissioners fix a date for payment of a second or subsequent dividend.

Notice in Gazette not less than thirty days prior.

Specifying last date for lodging claims (see below).

Circular to creditors who have not lodged claims—

To the like effect.

Lodgment of additional claims.

On or before a fixed date not less than fourteen nor more than twenty-one days before date for payment of dividend. (This date may subsequently be postponed in event of appeals against trustee's adjudication.)

Adjudication on claims fourteen days prior to date for payment of dividend—

Followed by "notices," "appeals," and "disposal of objections," all as in case of first dividend (see p. 92), the periods being calculated in reference to "the date fixed for payment of the dividend" instead of "the date of the second meeting."

State of ranking.

Trustee's accounts audited and additional remuneration fixed, subject to appeal.

Law agent's account taxed by Auditor of Sheriff Court.

State remodelled. An *equalising dividend* in respect of previous distributions must be set aside on all additional claims admitted [s. 176 (11)].

REPORT TO THE ACCOUNTANT.

(Section 176 (13).)

Within ten days after expiry of six months from date of Act and warrant, trustee must lodge with Accountant of Court *in duplicate* a report specifying—

(*a*) Amount of funds recovered.
(*b*) Amount of dividends paid.
(*c*) Amount and value of assets unrealised.
(*d*) Reasons for non-realisation.
(*e*) Estimated time when realisation will be completed.

Accountant may require *written or oral explanations* thereanent and must endorse on each duplicate his *approval or disapproval* of reasons stated for non-realisation.

One duplicate forwarded to trustee (who engrosses it in the Sederunt Book) and one retained.

Subsequent reports within ten days of expiry of three months from immediately preceding report.

DISCHARGE OF BANKRUPT.

As in case of ordinary sequestration (see p. 52).

Except that where the Sheriff has dispensed with further procedure in the sequestration, the bankrupt may *at any time* thereafter and *without the consent of the creditors* petition the Sheriff for his discharge (s. 176 (17)).

DISCHARGE OF TRUSTEE.

(Section 176 (14 to 16)).

On final division of the funds, or when Sheriff has dispensed with further procedure (see p. 93).

Application to the Accountant.

Lodging. Sederunt Book, accounts, and list of unclaimed dividends (if any). Thereafter—

Transfer of unclaimed dividends and unapplied balances to credit of "account of unclaimed dividends" at the bank in which funds of the estate have been lodged (see p. 55).

Deposit-receipt sent to Accountant.

Certificate issued by Accountant that *trustee* entitled to discharge.
Oral report to Sheriff by trustee.
Diet for hearing objections fixed.
Gazette notice at least seven days prior.
Parties heard *vivâ voce*, or Sheriff may make *note* of objections and answers and allow *proof*.
Diet may be adjourned.
Sheriff may grant warrant to cite witnesses and havers.
Deliverance by Sheriff.
(*a*) Refusing (in which event trustee may appeal within eight days to Inner House of Court of Session, or to Lord Ordinary in vacation); or
(*b*) Granting discharge and ordering cancellation and delivery of bond of caution.
Transmission of extract deliverances by Sheriff-Clerk to Accountant.
Bond of caution cancelled and delivered up.

IV.—EXTRA-JUDICIAL TRUST DEEDS.

TRUST DEED.

(Goudy, ch. xxxv.)

1. Form.
(*a*) *Unilateral trust deed, i.e.*—
Absolute disposition in favour of a trustee, with back-bond in favour of creditors containing terms of trust; or
Disposition *ex facie* in trust.
(*b*) *Mutual contract, i.e.*—
Trust deed and express or implied accession of creditors.
Duly *executed*, *stamped*, and delivered.

2. Implied Conditions (Bell's *Com.*, ii. 395).
(*a*) *Perfect equality among creditors, quoad* their existing rights at date of deed.
(*b*) *Accession of all creditors.*[1]
Mere neutrality on the part of other creditors, however, does not entitle an acceding creditor to withdraw from arrangement; see below, "Diligence" (*ibid.* 390).[1]

3. Essential Provisions (*ibid.* 384).
(*a*) Formal conveyance of a property to a trustee.
(*b*) For behoof of the *whole* creditors of the bankrupt.
(*c*) For realisation and distribution.

[1] Note 2, p. 103.

4. General Provisions.

(*a*) *Provisions binding upon acceding creditors only.*

(1) *Ranking of creditors ; e.g.*

Trustee appointed judge of claims ; or
Sequestration rules of ranking to apply ; see below, " Adjudication on Claims."

(2) *Discharge of or allowance to debtor.*

Note.—A non-acceding creditor may refuse to give effect to above conditions while nevertheless claiming a dividend with the other creditors, but he cannot do separate diligence after completion of trustee's title (Ogilvy *v.* Taylor, 1887, 14 R. 399, but see note *re* Sheriff Court decision in *Accountant's Magazine*, 1911, p. 22). He is not bound as a condition to discharge the *trustee* of his actings under the deed (Mitchell *v.* Thomson, 1911, 28 S.C.R. 210).

(*b*) *Provisions binding upon all creditors.*

Naming of *trustees in succession.*

Power to trustees to *assume new trustees* and *resign* office. (Failing this provision, application must be made to the Court to appoint a trustee in case of a vacancy from any cause.)

Enumeration of creditors.

Time and mode in which creditors must *accede.*

Power to trustee to *compromise* and submit to *arbitration.*

Appointment of *committee of creditors* to assist trustee.

Remuneration of trustee.

Mandate to trustee to apply, if necessary, for *sequestration.*[1]

5. Proof of Accession of Creditors (see Bell's *Com.*, ii. 393 *et seq.*).

(*a*) *Writing.*

Separate deed (unusual) ; or
Minute appended to trust deed.

(*b*) *Oath of creditor.*

(*c*) *Rebus ipsis et factis* (*ibid.*).

(*E.g.* Tacit acquiescence in resolution to accede, at a meeting of creditors.)

[1] Unless the trustee is a law agent the mandate should not be in his favour, as the mandatory requires to sign the petition for sequestration.

Accession in this way is *sufficient to preclude separate diligence* by creditor against the trust estate, *but not*, as a rule, *to bind him to the conditions of the trust deed, re*—

(*a*) Ranking of creditors.

(*b*) Discharge of, or allowance to, bankrupt.

6. Effect of Deed (see Nicolson *v.* Johnstone & Wright, 1872, 11 M. 185, per Lord Deas).

(*a*) Irrevocable by grantor.

(*b*) Diligence by acceding creditors precluded (see exception p. 102).

(*c*) Diligence by non-acceding creditors not competent after trustee completes his title (see exception, p. 101). Diligences begun prior to the date of the trust deed should be got rid of before the deed is granted.

COMPLETION OF TRUSTEE'S TITLE.

As soon as possible, to exclude separate diligence by non-acceding creditors.[1]

Method—

1. *Corporeal moveables*—by taking *possession*.[2]
2. *Debts*, etc.—by *intimation* of trust deed.
3. *Heritage, and moveables* requiring registration (*e.g.* shares in limited company, patents, etc.)—by *registration* of trust deed.

INTIMATION TO CREDITORS.

Circular to all known creditors.

Intimating—

1. That trust deed has been granted.
2. Appointment of trustee.
3. State of the estate and probable dividend.
4. Date for lodging claims.

REALISATION AND MANAGEMENT OF ESTATE.

Uncompleted contracts may be executed by trustee, but by so doing he incurs *personal liability* for all obligations thereunder. He should *therefore* obtain the *express* undertaking of substantial creditors to relieve him of any loss which may arise (Moncrieffe *v.* Ferguson, 1896, 24 R. 47).

[1] Also in order to give him a valid lien for outlays (see note 2, p. 103).

[2] A farmer granted a trust deed but nothing was done by the trustee to take legal possession. Held that a poinding after the expiry of sixty days was effectual on the ground that although the trust deed was unchallengeable the trustee had not completed his title (Doughty *v.* Wells, 1906, 14 S.L.T. 299).

Litigation may be entered upon or continued, but the above remark as to *personal liability*[1] applies (Torbet *v.* Borthwick, 1849, 11 D. 694).

Meetings of creditors are called by the trustee if and when necessary.

Sederunt Book and *accounts* should be regularly kept, as in sequestration.

Factor or *law agent* may be appointed by trustee.

Funds must be lodged in bank account, *qua trustee* (Bell's *Com.*, ii. 397).

ADJUDICATION UPON CLAIMS.

Whenever funds in hand to pay a dividend.

Adjudication may be recorded in *writing*, and *signed* by the trustee, as in sequestration.

RANKING—

(*a*) According to *common law*, if trust deed contains no provision to the contrary.

In this case creditors holding securities can rank for *full amount* of debt *without deducting* value of security (Kirkcaldy *v.* Middleton, 1841, 4 D. 208, per Lord Fullerton); and the preferences to rates, taxes, and others in sequestration under the Bankruptcy Act do not apply.[2]

(*b*) According to *sequestration rules* if trust deed so stipulates.

In this case creditors *must deduct* the value of their securities and rank for the *balance* (B.A., ss. 61 and 62).

Debts incurred by the bankrupt *subsequent to* the date of the *trust deed* do *not* form a claim upon the trust funds, but any *reversion* of the funds may be *attached* for the said debts.

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[1] In the case of a judicial factor a distinction has been drawn where he was *defending* an action and expenses were awarded against him as judicial factor, and it was held that he was not personally liable (Craig *v.* Hogg, 1896, 24 R. 6). There is some doubt as to whether or not the decision would apply to a trustee under a sequestration or trust deed.

[2] At common law there is (generally speaking) no such thing as preferable debts, all creditors at common law sharing alike (Wyness *v.* Thomson's Tr., 1888, 4 S.C.R. 201).

The only preferences subsisting at common law are deathbed and funeral expenses, and wages of farm and domestic servants for the current term (Bell's *Com.*, ii. 148).

Local rates are entitled to a preference, see (County Rates) L.G.A., 1889, s. 62 (5); (Burgh Rates) B.P.A., 1892, s. 370, and B.P.A., 1903, s. 46; (Poor Rates) Poor Law Act, 1845, s. 88.

Remedy of Dissatisfied Creditors (Kyd *v.* Waterson, 1880, 7 R. 884).

(*a*) *Acceding creditor.*
Action against the trustee to account for his intromissions.

(*b*) *Non-acceding creditor.*
Petition for sequestration.

NOTICE TO CREDITORS.

Stating—

(*a*) Claim admitted and amount ; or
Claim rejected and deliverance annexed.

(*b*) Amount of dividend and date of payment.

(*c*) Receipt for dividend (annexed) to be signed and exchanged for dividend on due date.

(*d*) Abstract of transactions of trustee to date.

PAYMENT OF DIVIDENDS.

On date *fixed by trustee.*

To *all* creditors (both acceding and non-acceding).

Note.—Acceptance of a dividend by non-acceding creditor does not bind him to terms of trust deed *re* ranking of his claim, or the discharge of, or allowance to, debtor (*ante*, p. 97).

AUDIT OF ACCOUNTS AND FIXING OF TRUSTEE'S COMMISSION.[1]

(Section 185.)

Compulsory in case of deeds (*a*) granted on or after 1st January 1914, and (*b*) drawn in favour of *creditors generally.*

By (1) committee of creditors if provision to that effect *in gremio* of the deed ; or

(2) The Accountant of Court (before final division of estate) in cases where (*a*) no committee appointed, or (*b*) committee does not act. In such cases the Accountant fixes the trustee's commission.

REDUCTION OF THE TRUST DEED.

1. Where Debtor Notour Bankrupt at Date on which Deed became Effectual [2] or within Sixty Days thereafter.
Non-acceding creditors may challenge the deed (Nicolson *v.* Johnstone & Wright, 1872, 11 M. 184).

[1] If trustee fails to observe these provisions and any regulations made by the Accountant he forfeits all claim to remuneration (B.A., s. 185).

[2] *I.e.* date of registration, delivery, or intimation, or such other proceeding as may be requisite to render deed effectual (B.A., s. 4).

2. Where Equality of Creditors is not Maintained (implied condition).

E.g. where a secret preference is given to secure accession of a creditor.

Any creditor may challenge the deed and sue for repetition of preference granted (see Mack *v.* Jenkin, 25th November 1814, F.C.).

3. Where Non-Acceding Creditors are Acquiring a Preference by Diligence.

Acceding creditors are not held bound to the terms of the deed (see *post*, "Diligence") (Lockie *v.* Mason, 1837, 15 S. 547).

4. Where Sequestration Supervenes.

Truster, with concurrence of duly qualified creditors, may petition for sequestration.

Provided—All creditors have not acceded to trust deed (M'Alister *v.* Swinburne, 1874, 1 R. 958).

Trustee may petition *if authorised* to do so by trust deed (see note 1, p. 97).

Non-acceding creditor may petition (Kyd *v.* Waterson, 1880, 7 R. 884).

Acceding creditor may petition, but *only* where necessary to prevent non-acceding creditors obtaining a preference (Jopp *v.* Hay, 1844, 7 D. 260; Campbell *v.* Macfarlane, 1862, 24 D. 1097).

Note.—The trustee under the trust deed *must denude* in favour of the trustee in sequestration on receiving *due acknowledgment* for funds handed over, but he has a *lien over funds* for expenses incurred by him as trustee, including his remuneration (Bell's *Com.*, ii. 391; Bell's *Prin.*, s. 1453; Thomson, 1880, 7 R. 1035; Salaman, 1900, 38 S.L.R. 224) [1] down to date of confirmation of trustee in sequestration but no farther (Dall *v.* Drummond, 1870, 8 M. 1006).

DILIGENCE AGAINST THE TRUST ESTATE.

1. By Non-Acceding Creditor.

(*a*) *Prior to completion of trustee's title.* Competent, where trust deed imposes conditions which are not binding upon non-acceding creditors; see p. 97.

(*b*) *Subsequent to completion of trustee's title.* Incompetent, *unless* the deed is challengeable as above (p. 100), in which case diligence is not excluded (Nicolson *v.* Johnstone & Wright, 1872, 11 M. 184).

[1] But see note 2, p. 103.

2. By Acceding Creditor or his Assignee.

Incompetent, *unless* where non-acceding creditors are acquiring preferences by diligence, in which case acceding creditors are not held bound by the trust deed (Lockie *v.* Mason, 1837, 15 S. 547).

The trustee may, on receiving an *assignation* of the *creditors' rights*, do diligence to obtain a *pari passu* ranking with non-acceding creditors. Such power may be conferred by the accession of creditors to a trust deed which expressly purports to grant the power. (See Fleming's Trs. *v.* M'Hardy, 1892, 19 R. 542.)

DISCHARGE OF DEBTOR.

Upon fulfilment of the trust.

By acceding creditors, but only if *stipulated* for in deed.

The radical right in the estate remains with the debtor, and he is entitled to any reversion of the estate and may interfere during currency of trust to prevent misappropriation (Pender *v.* Ferguson, 1831, 10 S. 19).

REMOVAL OF TRUSTEE.

By the Court of Session.

Upon petition by the truster or *any* creditor (Pender *v.* Ferguson, *supra*).

APPOINTMENT OF NEW TRUSTEE.

By the Court of Session.

Upon petition by the truster or *any* creditor.

Where trustee has *died* or been *removed* (Royal Bank of Scotland Petition, 1893, 20 R. 741).

Note.—If two trustees have been appointed, the survivor may act even although the deed contains no survivorship clause (Trusts Act, 1861, s. 1; Trusts Act, 1884, s. 2; Logan *v.* M'Rostie, 1907, 2 S.C. 196).

RESIGNATION OF TRUSTEE AND ASSUMPTION OF NEW TRUSTEE.

Competent where power to do so is given in the trust deed.

Trustees *in succession* may be named in the trust deed, in which case upon resignation of a trustee the next named will take office.

DISCHARGE OF TRUSTEE.

After estate has been *distributed*, the trustee is entitled to a discharge at the hands of *all* acceding creditors and the debtor, but not by non-acceding creditors (Mitchell *v.* Thomson, 1911, 28 S.C.R. 210).

Failing discharge by any of these the trustee may raise an action of multiplepoinding and exoneration, calling all the creditors (acceding and non-acceding) and the debtor (Kyd *v.* Waterson, 1880, 7 R. 886).

Remuneration of trustee.[1]

Fixed in terms of trust deed or by Accountant of Court as above. Trustee has a *lien* over the trust funds for his *outlays* and any *remuneration* due (Thomson *v.* Tough's Trs., 1880, 7 R. 1035; Salaman, 1900, 38 S.L.R. 224).[2]

Prior to final division.

Accounts audited and commission fixed by committee of creditors if such appointed in terms of deed, or by Accountant of Court failing such provision, or in event of failure of committee to act.

V.—EXTRA-JUDICIAL COMPOSITION CONTRACTS.[3]

SPECIAL COMPOSITION.

I.e. with *individual* creditor or creditors upon such terms as may be agreed upon (Bell's *Com.*, ii. 398). Thus it is quite a binding

[1] Apart from stipulation a trustee has been held to have no claim for remuneration (Johnston, 1738, 21 D. 1383). The point is not of much practical importance, as trust deeds invariably make provision for remuneration. Section 185 of Bankruptcy Act assumes a right to commission, and makes provision for the fixing of the amount.

[2] In a case where no creditor had acceded to the trust deed and the trustee did not set forth any possession of the estate exclusive of the truster it was held that he was merely factor for the truster, and that he had no lien or preference for his outlays or remuneration in a subsequent sequestration (Mess *v.* Hay, 1898, 1 F. (H.L.) 22).

[3] Where the estate is conveyed to a trustee pending the adoption of the composition arrangement or pending the final settlement of the composition, the provisions of section 185 of Bankruptcy Act as to audit of trustee's accounts must be kept in view (see p. 100).

contract to arrange with even one creditor to accept, say, 10s. per £ in full settlement of his debt.[1]

GENERAL COMPOSITION.

I.e. with *general body* of creditors.

Subject, apart from express stipulation, to two *implied conditions*, viz.—

(1) *Perfect equality among creditors* quoad their existing rights at date of contract (see Ironside *v.* Wilson, 1871, 9 S.L.R. 73).

(2) *Accession of all creditors* (Brown *v.* Macintyre, 1830, 8 S. 847).

The following procedure applies to general composition contracts : —

CIRCULAR TO CREDITORS.

(1) Making offer of composition and caution (usual, but not essential) therefor.

(2) Calling meeting to discuss same.

MEETING OF CREDITORS.

(1) *State of affairs* submitted.

(2) *Offer of composition* formally made.

(3) *Resolution* passed anent same, and fixing amount and nature of *caution* to be procured.

CONTRACT.

1. *Form* (see Henry *v.* Strachan & Spence, 24 R. 1046).
   (*a*) Formal deed ; or
   (*b*) Holograph or improbative writings by parties ; or
   (*c*) Minute of meeting of creditors duly authenticated.
2. *Essential provisions.*
   (*a*) Offer of a *rateable* proportion per £ of debts.
   (*b*) Payable to *all* creditors, whether claims lodged at date or not.
   (*c*) Acceptance of *all* creditors. If no obstruction is presented

[1] An arrangement with individual creditors during insolvency is liable to be set aside by other creditors as an illegal preference at common law, but it is not a *pactum illicitum*, and is binding on the parties to it *inter se* (Munro *v.* Rothfield, 1920 S.C. 165).

by non-acceding creditors the contract, though voidable, may of course be carried out, and if there is an express provision that the contract will be binding if a certain proportion, *e.g.* three-fourths of creditors, accede, such provision will be effectual as against acceding but not against non-acceding creditors.

3. *General provisions.*
   (*a*) Accession of a *specified* number of creditors within a *specified time*, otherwise offer to be withdrawn.
   (*b*) Time and mode of payment of composition.
   (*c*) Amount of caution to be procured.
   (*d*) Ranking of claims.
   (*e*) Discharge of debtor.

CIRCULAR TO CREDITORS.

Intimating date of payment of composition and annexing form of receipt.

PAYMENT OF COMPOSITION.

In cash or in bills for respective instalments signed by the debtor and the cautioner.

Documents of debt should be uplifted and receipt taken for payment of composition.

Non-acceding creditors are entitled to the dividend, but cannot be compelled to discharge the bankrupt.

REDUCTION OF CONTRACT.

1. *Where all creditors do not accede.*
   An implied condition is thus not fulfilled, and acceding creditors are entitled to refuse to be bound by the deed *unless* the consent of some number less than the whole has been agreed to in the deed (Bell's *Com.*, ii. 399 and 400). The contract is voidable but not void, and settlement may, of course, proceed by tacit consent.

2. *Where equality among creditors is not maintained* (implied condition). *E.g.* where preference given to secure concurrence of any creditor (see Ironside *v.* Wilson, 1871, 9 S.L.R. 73).

3. *Where material provisions of the contract are not implemented.*
   E.g. failure to pay composition offered or to find requisite caution.
   Unless creditors have absolutely discharged the debtor.

   Note.—As a rule, under an extra-judicial composition contract the debtor is not discharged until the composition is

paid or he is only conditionally discharged. Upon failure to pay the composition therefor the creditor's original debt revives. (*Cf.* Composition Contract in Sequestration, p. 62 ; also Deed of Arrangement, p. 60 ; Woods, Parker & Co. *v.* Ainslie, 1860, 22 D. 723.)

4. *Where debtor has misrepresented or fraudulently concealed the true position of his affairs.*

Contract is voidable even although debtor has obtained a discharge in absolute terms (Baillie *v.* Young, 1837, 15 S. 893).

CHALLENGE OF FRAUDULENT PREFERENCES.

1. By an individual creditor (Bell's *Com.*, ii. 399).
2. By the cautioner (Arrol *v.* Montgomery, 1826, 4 S. 501).
3. By trustee in subsequent sequestration of debtor's estate (Macfarlane *v.* Nicoll, 1864, 3 M. 237).
4. By the debtor himself (Arrol *v.* Montgomery, *supra*).

DISCHARGE OF DEBTOR.

By all acceding creditors (Bell's *Com.*, ii. 400).
When composition has been paid or sooner according to stipulation.

DISCHARGE OF CAUTIONER.

1. *When composition contract has been implemented.*

NOTE.—The cautioner may, if he is not a creditor, receive an *assignation of the debtor's estate* in security of or as a consideration for becoming cautioner, but in any case he is entitled, upon payment by him of the composition, to an assignation of the creditor's diligence, to enable him to operate his relief against the debtor (Robertson *v.* Ainslie's Trs., 1837, 15 S. 1299 ; Bell's *Prin.*, s. 255).

Sequestration of the debtor's estate or the discharge of the debtor under a sequestration would not, however, free the cautioner, and the creditors would be entitled to go against the cautioner for balance of composition, and also rank upon the sequestrated estate of debtor (Scott *v.* Campbell, 1834, 12 S. 447 ; Muir *v.* Scott, 1825, 4 S. 252).

2. *Where terms of contract are materially altered without cautioner's consent.*

APPENDIX.

	PAGES
STATUTES, ETC.	1–69
FORMS AND PRECEDENTS	70–102

ACT OF PARLIAMENT

TO

Consolidate and amend the Laws relating to Bankruptcy in Scotland.—
[3 and 4 Geo. V., cap. 20.—15th August 1913.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

I. *Short title.*—This Act may be cited as the Bankruptcy (Scotland) Act, 1913.

II. *Construction and meaning of certain expressions.*—In this Act, unless a contrary intention appears, "Lord Ordinary" shall mean the Lord Ordinary officiating on the Bills in the Court of Session; "deliverance" shall include any order, warrant, judgment, decision, interlocutor, or decree; "clerk or officer of the Court of Session" shall include the keeper of the registers of inhibitions and adjudications; "accountant" shall mean the accountant of Court appointed under the Judicial Factors (Scotland) Act, 1889 (52 & 53 Vict. c. 39); "Gazette" shall mean the *Edinburgh Gazette*; "commissioners" shall mean a majority of the commissioners elected under the provisions of this Act; "property" and "estate" shall, when not expressly restricted, include every kind of property, heritable or moveable, wherever situated, and all rights, powers, and interests therein capable of legal or voluntary alienation, or of being affected by diligence or attached for debt, and any non-vested contingent right of succession or interest in property conceived in favour of the bankrupt under the will or settlement of any person deceased, or under marriage contract, or under any other deed, instrument, or writing of an irrevocable nature; "moveable" shall include personal, and "heritable" shall include real; "security" shall include securities, heritable or moveable, and rights of lien, retention, or preference, and conveyances thereof and any part thereof; "successors" shall include all persons who have succeeded to any property which was vested in a party deceased at the time of his death, whether as heirs, heirs apparent, trustees under voluntary conveyances, representatives by deed or otherwise, executors, administrators, or nearest of kin, or as assignees, or legatees, and shall also include singular successors where they have acquired the right; "vote" shall include a consent to any offer of composition, deed of arrangement, recall of sequestration, or private sale of heritage, and to a discharge of the debtor, and also a dissent from such offer, deed of arrangement, recall, private sale, or discharge; "company" shall include bodies corporate, politic or collegiate, and partnerships; "partner of a company" shall include the members of such bodies; "debtor," "bankrupt," and "creditor" shall apply to companies as well as individuals, and shall include aliens; "undischarged bankrupt" shall include a person whose estate has been sequestrated and who has not received his discharge from a competent Court in Scotland; "summary sequestration" shall mean a sequestration to which the provisions of sections one hundred and seventy-four, one hundred and seventy-five, and one hundred and seventy-six of this Act apply.

III. *Reckoning of time.*—Periods of time in this Act shall be reckoned exclusive of the day from which such period is directed to run.

IV. *Dates of deeds.*—The date of a deed under this Act, or under the Act passed in the Parliament of Scotland held in the year one thousand six hundred and ninety-six, chapter five, shall be the date of the registration of the deed, or of delivery, or of intimation, or of such other proceeding as shall, in the particular case, be requisite for rendering such deed completely effectual.

Constitution and Effects of Notour Bankruptcy.

V. *Notour bankruptcy of individuals.*—Notour bankruptcy shall be constituted by the following circumstances:—

1st. By sequestration, or by the issuing of an adjudication of bankruptcy or the granting of a receiving order in England or Ireland; or

2nd. By insolvency, concurring—

(A)—(1) With a duly executed charge for payment, where a charge is necessary, followed by the expiry of the days of charge without payment;

(2) Where a charge is not necessary, with the lapse without payment of the days which must elapse before poinding or imprisonment can follow on a decree or warrant for payment of a sum of money;

(3) With a poinding or seizure of any of the debtors' moveables for non-payment of rates or taxes;

(4) With a decree of adjudication of any part of his heritable estate for payment or in security; or

(B) With sale of any effects belonging to the debtor under a sequestration for rent.

VI. *Of a company.*—Notour bankruptcy of a

company shall be constituted either in any of the foregoing ways or by any of the partners being rendered notour bankrupt for a company debt.

VII. *Commencement of notour bankruptcy.*—Notour bankruptcy shall be held to commence from the time when its several requisites concur, and when it has once been constituted shall continue, in case of a sequestration, till the debtor shall obtain his discharge, and in other cases until insolvency cease, without prejudice to notour bankruptcy being anew constituted within such period or after the expiry thereof, and any second or subsequent constitution of notour bankruptcy shall be available for all the purposes of section ten of this Act as well as for the purpose of applying for sequestration of a debtor's estates.

VIII. *Deeds made void by this Act, and alienations of property voidable, may be set aside by way of action, etc.*—Deeds made void by this Act, and all alienations of property by a party insolvent or notour bankrupt, which are voidable by statute or at common law, may be set aside either by way of action or exception, and a decree setting aside the deed by exception shall have the like effect, as to the party objecting to the deed, as if such decree were given in an action at his instance: and this section shall apply as well in the Sheriff Court as in the Court of Session.

IX. *May be by trustee.*—The trustee on a sequestrated estate, whether representing prior creditors or not, shall, under this Act, be entitled to set aside any such deed or alienation for behoof of the whole body of creditors, and in so doing shall be entitled to the benefit of any presumption which would have been competent to any creditor.

Pari passu Ranking of Diligence.

X. *Arrestments and poindings.*—Arrestments and poindings which shall have been used within sixty days prior to the constitution of notour bankruptcy, or within four months thereafter, shall be ranked *pari passu* as if they had all been used of the same date; provided that, if such arrestments are used on the dependence of an action, they be followed up without undue delay: provided further that any creditor judicially producing in a process relative to the subject of such arrestment or poinding liquid grounds of debt or decree of payment within such period shall be entitled to rank as if he had executed an arrestment or a poinding; and in case the first or any subsequent arrester shall, in the meantime, obtain a decree of forthcoming and preference, and thereupon shall recover payment, or a poinding creditor shall carry through a sale, he shall be accountable for the sum recovered to those who, by virtue of this Act, may be eventually found to have a right to a ranking *pari passu* thereon, and shall be liable to an action at their instance for payment to them proportionally, after allowing out of the fund the expense of recovering the same; and if any arrestments be used for attaching the same effects after the period of four months subsequent to the bankruptcy, such arrestments shall not compete with those used within the said periods prior or subsequent thereto, but may rank with each other on any reversion of the fund attached, according to law and practice.

Sequestration, when competent.

XI. *Sequestration may be awarded in cases herein enumerated.* — Sequestration may be awarded of the estate of any person in the following cases:—

1st. In the case of a living debtor subject to the jurisdiction of the Supreme Courts of Scotland:

(A) On his own petition, with the concurrence of a creditor or creditors, qualified as hereinafter mentioned;

(B) On the petition of a creditor or creditors, qualified as hereinafter mentioned, provided the debtor be notour bankrupt, and have within a year before the date of the presentation of the petition resided or had a dwelling-house or place of business in Scotland; or otherwise, in the case of a company being notour bankrupt, as hereinbefore provided, if it have within such time carried on business in Scotland, and any partner have so resided or had a dwelling-house or if the company have had a place of business in Scotland:

2nd. In the case of a deceased debtor who at the date of his death was subject to the jurisdiction of the Supreme Courts of Scotland:

(A) On the petition of a mandatory to whom he had granted a mandate to apply for sequestration;

(B) On the petition of a creditor or creditors qualified as hereinafter mentioned.

XII. *Qualification of creditors, petitioning or concurring.*—Petitions for sequestration may be at the instance or with the concurrence of any one or more creditors whose debt or debts together amount to not less than fifty pounds, whether such debts are liquid or illiquid, provided they are not contingent.

XIII. *Within what date petitions may be presented.*—Petitions for sequestration, presented without the concurrence of the debtor, he being in life, shall be competent only within four months of the date of the debtor's notour bankruptcy; and petitions for sequestration of the estates of a deceased debtor at the instance of a creditor may be presented at any time after the debtor's death, but no sequestration shall be awarded until the expiration of six months from the debtor's death, unless he was at the time of his death notour bankrupt, or unless his successors shall concur in the petition or renounce the succession, in which several cases sequestration shall forthwith be awarded; and in all other cases falling under this Act a petition for sequestration shall be competent at any time, and sequestration may follow thereon in manner hereinafter directed.

INTERIM PRESERVATION OF ESTATE.

XIV. *Court may take measures to preserve estate before sequestration.*—It shall be competent for the Court to which a petition for sequestration is presented, whether sequestration can forthwith be awarded or not, on special application by a creditor, either in such petition or by a separate petition, with or without citation to other parties interested, as the said Court may deem necessary, or without such special application if the Court think proper, to take immediate measures for the preservation of the estate, either by the appointment of a judicial factor, who shall find such caution as may be deemed necessary, with the powers necessary for such preservation, including the power to recover debts, or by such other proceedings as may be requisite; and such interim appointments or proceedings shall be carried into immediate effect; but, if the same have been made or ordered by the Sheriff, they may be recalled by the Court of Session, on appeal taken, in manner hereinafter directed.

XV. *After sequestration bankrupt's papers may be sealed up.*—The Sheriff shall have power, upon cause shown by any creditor, or without any application, if he shall think fit: (1) At any time after the sequestration and before the election of a trustee, to cause to be sealed up and put under safe custody the books and papers of the bankrupt, and to lock up his shop, warehouse, or other repositories, and to keep the keys thereof till a trustee is elected and confirmed: (2) At any time after the presentation of a petition for sequestration, to grant warrant to take possession of and put under safe custody any bank notes, money, bonds, bills, cheques or drafts, or other moveable property belonging to or in the possession of the debtor; and, if necessary for that purpose, to open lock-fast places, and to search the dwelling-house, shop, counting-house, warehouse, or other premises, and the person of the debtor.

FORUM.

XVI. *Courts for awarding sequestration.*—Sequestration may be awarded in the case of a debtor in life or of a deceased debtor either by the Court of Session or by the Sheriff of any county in which the debtor has resided or carried on business for the year preceding the date of the petition, or in the case of a deceased debtor for the year preceding the date of his death: Provided (1) that no sequestration shall be awarded by any Court after production of evidence that a sequestration has already been awarded in another Court, and is still undischarged; (2) that, where a prior petition for sequestration is in dependence before any Court, the Court to which a subsequent petition has been presented may remit such subsequent petition to the Court in which the prior petition is in dependence.

XVII. *Later sequestrations to be remitted to the first in date.*—When sequestration has been awarded against a debtor by the Sheriffs of two or more counties, the later sequestration or sequestrations shall, on production of a certificate by the sheriff-clerk of the county in which the sequestration first in date was awarded, setting forth the date of such sequestration, be remitted to the Sheriff of such county, and a notice of such remit shall be inserted in the *Gazette* within four days after a copy of the deliverance of such remit could be received in course of post in Edinburgh. Where all the sequestrations are of the same date, any one may be brought by appeal at any time before either Division of the Court of Session or Lord Ordinary; and on such appeal, or when a sequestration has been awarded by the Court of Session alone, or by the Court of Session and also by one or more Sheriff Courts, the Court of Session or Lord Ordinary shall remit the sequestration to such Sheriff Court as in the whole circumstances they or he shall deem expedient; and a notice of such remit shall be inserted in the *Gazette* within four days after such remit shall have been made: Provided always that, in any case in which the Sheriff has refused to sequestrate, it shall be competent to present a petition for sequestration to the Court of Session notwithstanding such judgment of refusal.

XVIII. *No proceeding under order of Sheriff to be effectual after appeal, except for preservation of estate.*—It shall be competent in such case for each Sheriff awarding sequestration to take such measures in the meantime as may be necessary for preserving the debtor's estate and effects within his jurisdiction, under the provisions of this Act; but no other orders given by any Sheriff on or after awarding sequestration, and no proceedings of creditors or others in pursuance thereof, excepting orders given by the Sheriff before whom the sequestration comes to depend, shall be of any force or effect from and after the date of such appeal, or of sequestration by the Court of Session.

XIX. *Transfer of sequestration.*—After a sequestration has been awarded it shall be competent at any time to bring such sequestration before the Court of Session or the Lord Ordinary by appeal, and the Court or the Lord Ordinary may thereupon transfer such sequestration from the Sheriff Court to which it has been remitted or before which it depends to any other Sheriff Court.

FORM OF PETITION, AND PRODUCTIONS THEREWITH.

XX. *Form of petition—Oath to be produced.*—Petitions for sequestration in the Court of Session shall be made to the Lord Ordinary, and be signed by the petitioner or his counsel or agent, and the Division of the Court to which the sequestration is appropriated shall be marked thereon, and in the Sheriff Court shall be signed by the petitioner or his agent, and in either Court, in petitions at the instance of the debtor, but not signed by him, there shall be produced therewith a mandate authorising the same, signed by him, or in the case of a company signed by a party entitled to act for the company; and in all cases the petitioning or concurring creditor shall pro-

duce with such petition an oath to the effect hereinafter specified, and also the account and vouchers of the debt as hereinafter provided; failing which production the petition shall be dismissed.

XXI. *Oath to be to verity of debt and extent of securities.*—Such oath, in the case of a creditor residing within the kingdom of Great Britain and Ireland, shall be taken by him before a judge ordinary, magistrate, justice of the peace, a notary public, or a commissioner competent to administer oaths in the High Court of Justice in England or Ireland, to the verity of the debt claimed by him; and he shall in such oath state what other persons, if any, are, besides the bankrupt, liable for the debt or any part thereof, and specify any security which he holds over the estate of the bankrupt or of other obligants, and depone that he holds no other obligants or securities than those specified; and, where he holds no other person than the bankrupt so bound, and no security, he shall depone to that effect.

XXII. *How taken, when creditor out of Great Britain or Ireland.*—Such oath, in the case of a creditor who is out of the kingdom of Great Britain and Ireland, shall be taken by him to the verity of the debt in the manner above provided before a magistrate or justice of the peace, or other person qualified to administer oaths in the country where he resides (he being certified to be a magistrate or justice of the peace, or qualified as aforesaid, by a British minister or British consul, or by a notary public), or his known agent or mandatory in Great Britain or Ireland shall make an oath of credulity in the manner and to the effect before provided.

XXIII. *Oath to specify further particulars in certain cases.*—When a petition is presented for sequestration of the estates of a deceased debtor, the petitioning creditor shall, in his oath, or in a separate oath, specify the place where the debtor resided or had a dwelling-house or carried on business in Scotland at the time of his death, and whether he was then owner of estates in Scotland.

XXIV. *Claims of companies and creditors who are minors or incapable.*—When the creditor is a corporation, an oath of verity made as aforesaid by the secretary, manager, cashier, clerk, or other principal officer of such corporation shall be sufficient, although the person making the same be not a member of such corporation, or in case of other companies an oath by a partner shall be sufficient; and where any creditor shall be under age or incapable to make oath, an oath of credulity as aforesaid by his authorised agent, factor, guardian, or manager shall be sufficient.

Citation on Petition.

XXV. *When citation of parties necessary.*—When a petition for sequestration is presented without the consent of the debtor, or for the sequestration of the estate of a debtor who is dead, without the consent of the successor, the Lord Ordinary or Sheriff to whom it is presented shall grant warrant to cite the debtor, or, if dead, his successor, to appear within a specified period, if he be within Scotland, by delivering to him personally, or by posting in a registered letter addressed to him at his dwelling-house or place of business, or the dwelling-house or place of business last occupied by him, a copy of the petition and warrant, and, if the debtor or his successor be furth of Scotland, to cite him to appear within a specified period by leaving such copy at the office of edictal citations and at the dwelling-house or place of business last occupied by him, to show cause why sequestration should not be awarded; and the Lord Ordinary or the Sheriff shall, if desired, grant diligence to recover evidence of the notour bankruptcy or other facts necessary to be established.

XXVI. *In sequestration of a company.*—When the debtor is a company, it shall be a sufficient citation that a copy of the petition and warrant be left at the place where the business of the company is or was last carried on, provided a partner or a clerk or a servant of the company be there, and failing thereof at the dwelling-house of any of the acting partners, and, if the house of such partner cannot be found, by leaving a copy at the office of edictal citations; and sequestration may be awarded either on the application of the company itself, or on the application of a creditor or creditors to the amount aforesaid, without the consent of the company, of the estates of the company and partners jointly, or of their respective estates separately.

XXVII. *Inducíæ of citation.*—The *inducíæ* of citation, when made personally or at a dwelling-house or place of business, shall be not less than six nor more than fourteen days, and when made edictally shall be fourteen days; and the Lord Ordinary or the Sheriff at the same time shall direct intimation of the warrant, and of the diet of appearance on such *inducíæ*, to be made in the *Gazette*: Provided that, where citation is made edictally and the address of the debtor in England or Ireland is known, a copy of the petition shall be sent to him at that address by registered letter posted on the day upon which the *inducíæ* of citation begin to run.

Procedure on Petition.

XXVIII. *Sequestration to be forthwith awarded on petition by debtor.*—When a petition is presented in manner aforesaid to the Lord Ordinary, or to the Sheriff, for sequestration, the Lord Ordinary or the Sheriff shall forthwith, if the same is presented by or with the concurrence of the debtor, or, if dead, of his successor, or if the successor shall renounce the succession, issue a deliverance by which he shall award sequestration of the estates which then belong or shall thereafter belong to the debtor before the date of the discharge, and declare the estates to belong to the creditors for the purposes of this Act, and, if the debtor is dead, shall ordain any successor who has made up a title to or is in possession of any part of his property to convey the same to the trustee to be appointed as hereinafter mentioned.

XXIX. *Sequestration to be awarded after citation and hearing parties when petition not by debtor.*—Where the petition is not by or with the concurrence of the debtor, or, if dead, of his successor, and if the debtor, or, if dead, his successor, do not appear at the diet of appearance, either in person or by his counsel or agent, and show cause why the sequestration cannot be competently awarded, or if the debtor so appearing do not instantly pay the debt or debts in respect of which he was made bankrupt, or produce written evidence of the same being paid or satisfied, and also pay or satisfy, or produce written evidence of the payment or satisfaction of the debt or debts due to the petitioner or to any other creditor appearing and concurring in the petition, the Lord Ordinary or Sheriff, on production of evidence of the citation and of the foresaid requisites for sequestration, shall award sequestration in manner and to the effect before mentioned; and it shall not be competent for any creditor, after the date of the first deliverance on the petition for sequestration, to be confirmed executor creditor, or to raise or insist in any adjudication against the estate of the deceased debtor.

XXX. *Recall of sequestration within forty days.*—The deliverance awarding sequestration shall not be subject to review; but any debtor whose estate has been sequestrated without his consent, or the successors who have not renounced the succession of any deceased debtor whose estate has been sequestrated without their consent, unless on the application of a mandatory authorised by the deceased debtor, or any creditor, whether the sequestration has been awarded by the Lord Ordinary or by the Sheriff, may, within forty days after the date of such deliverance, present a petition to the Lord Ordinary, setting forth the grounds for recall, and praying for recall; and when sequestration has been awarded of the estate of a deceased debtor, when his successor was edictally cited, it shall be competent for his successor, or any person having interest, to apply by petition as aforesaid at any time before the publication of the advertisement for payment of the first dividend hereinafter mentioned; and the Lord Ordinary shall, in these several cases, order a copy of the petition for recall and of his deliverance to be served on the parties who petitioned or concurred in the petition for sequestration, or on their respective known agents, and on the trustee, if appointed, and shall require them to answer within a specified short time, and order a notice of the presentation of the petition for recall to be published in the *Gazette*, and on the expiration of the time so fixed he shall proceed to pronounce judgment; and, if he shall recall the sequestration, the recall shall be entered in the register of sequestrations, and an abbreviate extract thereof in the form of Schedule E, No. 5, hereto annexed, shall be recorded in the registers of inhibitions and adjudications.

XXXI. *Recall of sequestration at a future time.*—No petition for recall of the sequestration, excepting as hereinafter provided, shall be competent after the expiration of the said forty days, or after the advertisement for payment of the first dividend; provided that nine-tenths in number and value of the creditors ranked on the estate as herein directed may at any time apply for recall by petition to the Lord Ordinary, who shall order notice of his deliverance to be published in the *Gazette*, requiring all concerned to appear within fourteen days from the date of publication to show cause why the sequestration should not be recalled, and on expiration of the said time he shall proceed to pronounce judgment.

XXXII. *Proceedings not to be stayed.*—Pending any petition for recall, and until the sequestration be finally recalled, the proceedings in the sequestration shall go on as if no such petition had been presented.

XXXIII. *Sisting of one party for another.*—If a creditor who has petitioned for sequestration, or concurred in such petition, or who has petitioned for recall of a sequestration, or appeared to oppose a petition for sequestration or recall, or lodged an objection, shall withdraw, or become bankrupt, or die, any other creditor may be sisted in his place and follow out the proceedings; and, if the debtor shall die after the petition for sequestration is presented, the proceedings shall notwithstanding be followed out in terms of this Act, so far as circumstances will permit.

XXXIV. *Majority of creditors may resolve that estate be wound up.*—At the meeting for the election of the trustee or at any subsequent meeting to be called for the purpose, a majority in number and three-fourths in value of the creditors present or represented at such meeting may resolve that the estate ought to be wound up under a deed of arrangement, and that an application should be presented to the Lord Ordinary or the Sheriff to sist procedure in the sequestration for a period not exceeding two months, and on such resolution being carried it shall not be necessary to elect a trustee. The provisions of this Act relative to deeds of arrangement shall extend to and include settlements or arrangements by way of composition.

XXXV. *Bankrupt to report resolution to the Lord Ordinary.*—It shall be lawful for the bankrupt, or any person appointed by the meeting, to report such resolution to the Lord Ordinary or the Sheriff within four days of the date of such resolution, and to apply for a sist of the sequestration in terms thereof; and the Lord Ordinary or the Sheriff may hear any party having interest, and, if he shall find that such resolution was duly carried, and that the application is reasonable, may grant the same.

XXXVI. *Lord Ordinary to make arrangement for interim management of estate.*—In the event of such application being granted, the Lord Ordinary or the Sheriff may, on the application of any creditor, make such arrangement for the interim management of the estate as he shall think reasonable, if any shall appear to be necessary.

XXXVII. *If sequestration be sisted, creditors may produce to the Lord Ordinary a deed of arrangement.*—If the sequestration shall be sisted, the creditors may, at any time within the period of such sist, produce to the Lord

Ordinary or the Sheriff a deed of arrangement, subscribed by or by authority of a majority in number and three-fourths in value of the creditors of the bankrupt; and the Lord Ordinary or the Sheriff may consider the same, and make such intimation thereof as he may think proper, and hear parties having interest, and make any inquiry he may think necessary; and, if he shall be satisfied that such deed of arrangement has been duly entered into and executed and is reasonable, he shall approve thereof, and declare the sequestration at an end; and such deed shall thereafter be as binding on all the creditors as if they had all acceded thereto: Provided always that the sequestration shall receive full effect in so far as may be necessary for the purpose of preventing, challenging, or setting aside preferences over the estate.

XXXVIII. *If resolution not reported the sequestration to proceed.*—If such resolution shall not be duly reported, or if a sist be refused, or if such deed of arrangement shall not be duly produced, or if it shall not be approved of, the sequestration shall proceed, and the period of time subsequent to such resolution shall not be reckoned in calculating periods of time prescribed in this Act; and the Lord Ordinary or the Sheriff may make all necessary orders, by appointing meetings of creditors and otherwise, for resuming the necessary procedure in the sequestration.

XXXIX. *If sequestration declared at an end, judgment to be recorded.*—If the sequestration be declared at an end, the judgment declaring the same shall be recorded in the same manner as if the sequestration had been recalled as hereinbefore provided.

XL. *Payment of expenses of petitioning or concurring creditor.*—The petitioning or concurring creditor shall be entitled to payment by the trustee, when he shall be appointed, out of the first of the funds which shall come into his hands, of the expenses incurred by such creditor in obtaining the sequestration and doing the other acts hereby required prior to the election of the trustee, as the same shall be taxed.

XLI. *Commencement of sequestration.*—In all questions under this Act or preceding Acts regarding sequestration of the estates of debtors, the sequestration shall be held to commence and take effect on and from the date of the first deliverance on any petition for sequestration, which shall be held to be the date of the sequestration, although the sequestration be not actually awarded until a later date.

XLII. *Clerks to sequestration—Sequestration not to fall asleep.*—In sequestrations awarded in the Court of Session and remitted to the Sheriff the process of sequestration shall be held to be in the Bill Chamber of the Court of Session, and the clerks of the Bill Chamber shall be clerks to such sequestrations; and the sheriff-clerk of any county shall be clerk to the sequestrations awarded by the Sheriff of that county; and no process of sequestration, either in the Court of Session or Sheriff Court, shall fall asleep; and, on a remit of a sequestration awarded in the Court of Session being made to the Sheriff, a copy of the petition for sequestration and of the first deliverance, and also (where it is different) of the deliverance awarding sequestration, certified by one of the clerks of the Bill Chamber, shall, with the productions, be transmitted by the petitioner to the sheriff-clerk of the county to the Sheriff of which the sequestration is remitted; and in all sequestrations the sheriff-clerk and messengers-at-arms and officers of the Sheriff Court shall have power to act in their respective offices under this Act.

XLIII. *Recall of sequestration on special grounds.*—If, in any case where sequestration has been or shall be awarded in Scotland, it shall appear to the Court of Session or to the Lord Ordinary, upon a summary petition by the accountant or any creditor or other person having interest presented to either Division of the said Court or to the Lord Ordinary at any time within three months after the date of the sequestration that a majority of the creditors in number and value reside in England or in Ireland, and that from the situation of the property of the bankrupt or other causes his estate and effects ought to be distributed among the creditors under the bankrupt or insolvent laws of England or Ireland, the said Court in either Division thereof or the Lord Ordinary, after such inquiry as to them shall seem fit, may recall the sequestration: Provided that any interlocutor of the Lord Ordinary to that effect shall be subject to review.

Registration of Sequestrations.

XLIV. *Recording abbreviate of sequestration.*—The party applying for sequestration shall present, before the expiration of the second lawful day after the first deliverance if given by the Lord Ordinary, or present or transmit by post before the expiration of the second lawful day after the said deliverance if given by the Sheriff, an abbreviate of the petition and deliverance, signed by him or his agent, in the form of Schedule (A, No. 1) hereunto annexed, to the keeper of the registers of inhibitions and adjudications at Edinburgh, who shall forthwith record the said abbreviate in the said registers, and write and subscribe a certificate thereof on the said abbreviate in the form also specified in the said Schedule (A, No. 2), and shall, on the request of the party transmitting such abbreviate, and on payment by him of the fees of such registration, and of the postage, re-transmit the said abbreviate by post to the said party; and the abbreviate so recorded shall from the date of the said deliverance have the effect of an inhibition and of a citation in an adjudication of the estate of the debtor at the instance of the creditors afterwards ranked on the estate; and it shall not be competent to stop such effect, or the effect of the sequestration after it is awarded, by paying the debt or debts in respect of which it was applied for or awarded: Provided that such effect shall expire on the lapse of a period of five years from the date of the abbreviate being so recorded, but that

it shall be competent and unless the trustee has been discharged he is hereby required before the lapse of such period to record a memorandum in the form of the said Schedule (A, No. 4), which memorandum when so recorded shall have the same effect as the recorded abbreviate and shall expire in like manner; and that it shall be competent and unless the trustee has been discharged he is hereby required to record a memorandum as aforesaid before the lapse of every subsequent period of five years with the like effect and expiring in the like manner, and, if the said abbreviate or memorandum be not so recorded, it shall have no effect as an inhibition or citation as aforesaid.

The party applying for sequestration shall, within four days from the date of the deliverance awarding the sequestration (if awarded in the Court of Session), or, if it is awarded by the Sheriff, within four days after a copy of the said deliverance could be received in course of post in Edinburgh, insert a notice in the form of Schedule (B) hereunto annexed in the *Gazette*, and also one notice in the same terms within six days from the said date in the *London Gazette*.

Ranking of Claims.

1. *General Rules as to Voting and Ranking for Payment of Dividends.*

XLV. *Creditor claiming must produce oath.*—To entitle a creditor to vote or draw a dividend, he shall be bound to produce at the meeting, or in the hands of the trustee, an oath to the effect and taken in manner hereinbefore appointed in the case of creditors petitioning for sequestration, and the account and vouchers necessary to prove the debt referred to in such oaths.

XLVI. *Oath in cases where accounts and vouchers are not in creditor's possession.*—If the creditor be not in possession of such accounts and vouchers previously to the period hereinafter assigned for lodging claims with a view to a share in any dividend, he shall state, in his oath, the cause of the said accounts and vouchers not being produced, and in whose hands, to the best of his knowledge, the same are; which oath shall entitle him to have a dividend set apart till a reasonable time be afforded for production thereof, or for otherwise establishing his debt according to law; but he shall not be entitled to act or vote till such production be made, or the debt established as aforesaid; and the trustee shall, on production of the oaths and grounds of debt, mark the same with his initials, and make an entry thereof in the sederunt book, and of the date when the same were produced, and, if required, he shall return to the creditor the grounds of debt.

XLVII. *Provision for correction of oath.*—When it shall appear to the Sheriff or to the trustee that the oath or claim of any person produced with a view to voting or ranking, and drawing a dividend on the sequestration, is not framed in the manner required by this Act, the Sheriff or trustee, as the case may be, shall call upon such person, or his agent or mandatory, to rectify his oath and claim, pointing out to him wherein it is defective; and, unless such person or his agent or mandatory shall thereupon make such alteration upon his oath and claim as may be necessary in order to rectify the same, the Sheriff or trustee, as the case may be, shall disallow or reject such oath and claim: Provided always that, when the failure to comply with the provisions of this Act shall appear to have been made for some improper or fraudulent purposes, or where injury can be qualified by the other creditors or any of them in respect thereof, it shall not be incumbent upon the Sheriff or trustee to give such person an opportunity to rectify his oath and claim as aforesaid.

XLVIII. *Creditors may vote and rank for principal and interest to date of sequestration only.*—A creditor who has a claim or a debt due shall be entitled to vote and rank for the accumulated sum of principal and interest to the date of the sequestration, but not for any interest accruing after the date of the sequestration, and, if the debt is not payable till after the date of the sequestration, he shall be entitled to vote and rank for it only after deduction of the interest from that date, and he shall also be liable to deduction of any discount beyond legal interest to which his claim is liable by the usage of trade applicable to it, or by the contract or course of dealing between the creditor and the bankrupt, but he shall not be bound to specify separately in his oath or claim for his debt the amount of any interest due thereon or of any interest or discount deducted therefrom, or to specify therein any accumulated sum of principal and interest, and, if there be any residue of the estate after discharging the debts ranked, he shall be entitled to claim out of such residue the full amount of the interest on his debt in terms of law.

XLIX. *Valuation of claim depending on a contingency.*—When the claim of a creditor depends upon a contingency which is unascertained at the date of lodging his claim, he shall not be entitled to vote nor to draw a dividend in respect of such contingent debt, but he may apply to the Sheriff, if the trustee has not been elected, or, if elected, to the trustee, to put a value on such debt, and the Sheriff or trustee (as the case may be) shall put a value thereon as at the date of such valuation; and on such value being fixed such creditor shall be entitled to vote and draw dividends in respect of such value, and no more: Provided that, if such contingency have taken place before the debt has been valued, such creditor may vote and draw dividends in respect of the amount of the debt, but the same shall not disturb any former dividends allotted to other creditors; and, when such application is made to the Sheriff, notice thereof shall be given to the bankrupt and petitioning or concurring creditor; and the judgment of the Sheriff or trustee shall be subject to review, and any creditor who has claimed on the estate may appeal, or appear and be heard on any appeal.

L. *Valuation of claim on annuity.*—No creditor in respect of an annuity granted by the bankrupt shall be entitled to vote and draw a dividend until such annuity shall be valued, but he may, if the trustee has not been elected, apply to the Sheriff, or, if elected, to the trustee, to put a value on such annuity; and the Sheriff or trustee, as the case may be, shall put a value on the annuity, regard being had to the original price given for the annuity, deducting therefrom such diminution in the value of the annuity as shall have been caused by the lapse of time since the grant thereof to the date of the sequestration; and such creditor shall be entitled to vote and draw dividends in respect of such value, and no more: Provided always that, when such application is made to the Sheriff, notice thereof shall be given to the bankrupt and the petitioning or concurring creditor; and the judgment of the Sheriff or trustee shall be subject to review, and any creditor who has claimed on the estate may appeal, or appear and be heard on any appeal.

LI. *Creditor not to sue cautioner after the date of sequestration.*—When any person is bound as cautioner for payment of such annuity, it shall not be lawful for the creditor therein to sue or charge such cautioner after the date of the sequestration, except for the value fixed as aforesaid, and the arrears of annuity and interest thereon; and, on such cautioner making payment of such value and arrears to the creditor and the lawful interest thereon, he shall be discharged of all liability for such annuity, and he may thereupon enter a claim in the sequestration for the sum so paid, and vote and draw dividends thereon; provided that, if such cautioner shall not pay the sum so fixed and arrears and interest as aforesaid, before any payment of the annuity subsequent to the fixing thereof becomes due, he shall be bound to make payment of the said annuity, and all subsequent annuities, until he shall make payment of the sum so fixed, arrears of annuity and interest as aforesaid, deducting always such dividends as the creditor shall have received before full payment as aforesaid.

LII. *Obligant not freed from liability for debt, in respect of any vote given or dividend drawn by the creditor.*—When a creditor has an obligant bound to him along with the bankrupt for the whole or part of the debt, such obligant shall not be freed from his liability for such debt in respect of any vote given or dividend drawn by the creditor, or of his assenting to the discharge of the bankrupt, or to any composition or deed of arrangement; but such obligant may require and obtain, at his own expense, from such creditor, an assignation to the debt, on payment of the amount thereof, and in virtue thereof enter a claim on the said estate, and vote and draw dividends, if otherwise legally entitled to do so.

LIII. *Liability of creditors for expenses.*—No person shall, by merely lodging an oath and claim, or being ranked or receiving payment of a dividend or appearing or voting at a meeting in a sequestration as a creditor, be liable for any claim by the agent or other person employed by the trustee for money advanced, or expense incurred, or remuneration in relation to the affairs of the estate, reserving to the agent or other person so employed right to payment out of the estate and from the trustee by whom he may have been employed, in so far as the same may be competent to him; and no trustee shall have relief in respect of such payment against such creditor, reserving to such trustee relief against the estate, and against those creditors or others who may on other grounds be liable in relief.

LIV. *Oaths not to supersede other evidence.*—In no case shall oaths of verity or credulity supersede production of legal evidence, when required, in any discussion before the Court of Session, the Lord Ordinary, the Sheriff, or the trustee.

2. *Special Rules as to Voting.*

LV. *Valuation of securities for voting.*—If a creditor hold a security for his debt over any part of the estate of the bankrupt, he shall, before voting, make an oath, in which he shall put a specified value on such security, and deduct such value from his debt, and specify the balance, and, if the estate over which the security extends be sold, he shall specify in his oath the free proceeds which he has received or shall be entitled to receive therefrom, and specify the balance due after deduction thereof, and he shall be entitled in any case to vote in respect of the balance, and no more, without prejudice to the amount of his debt in other respects; and in questions as to the disposal or management of the estate subject to his security he shall be entitled to vote as a creditor for the full amount of his debt, without making any such deduction: Provided that, if a creditor hold more than one such security, he shall value each separately.

LVI. *Valuation of obligations of co-obligants with bankrupt.*—When a creditor has an obligant bound with but liable in relief to the bankrupt, or holds any security from an obligant liable in relief to the bankrupt, or any security from which the bankrupt has a right of relief, such creditor shall, before voting, make an oath, in which he shall put a specified value on the obligation of such obligant, and on such security to the extent to which the bankrupt is entitled to relief, and he shall deduct such value from his debt, and specify the balance, and he shall be entitled to vote in respect of such balance, and no more, without prejudice to the amount of his debt in other respects: Provided that, when a creditor has more than one such obligant, or holds more than one such security, he shall put a specified value on the obligation of each such obligant and on each such security.

LVII. *Valuation of claims against a company and partners.*—A creditor on the estate of a company shall not be bound, for the purpose of voting on the company's estate, to deduct from his claim the value which he may be entitled to draw from the estates of the partners; but, if he claim on the estate of a partner, he shall, before voting, in his oath put a specified value on his claim against the estate of the company, and also against the

other partners thereof, in so far as they are liable to relieve such partner, and deduct such value from his debt, and specify the balance, and he shall be entitled to vote as a creditor for the said balance, and no more, without prejudice to the amount of his debt in other respects.

LVIII. *Trustee may require a conveyance of security by creditor on 20 per cent. addition to his own valuation—Creditor may correct valuation by new oath.*—It shall be competent to the trustee, with consent of the commissioners, within two months after an oath, specifying the value of a security or securities, or obligation or obligations, or claim in the several cases before mentioned, has been made use of in voting at any meeting or in assenting to or dissenting from the bankrupt's composition or discharge, and it shall also be competent to the majority of the creditors (excluding the creditor making such oath) assembled at any meeting, and during such meeting, to require from the creditor making such oath a conveyance or assignation in favour of the trustee of such security or securities, obligation or obligations, or claim, on payment of the specified value or values, with twenty per centum in addition to such value or values; and the creditor shall be bound to grant such conveyance or assignation, at the expense of the estate: Provided that, where a creditor has put a value on such security or obligation or each of such securities or obligations, he may, at any time after the lapse of twenty-one days from the date on which the claim has been voted on and before he has been required to convey and assign as aforesaid, correct such valuation by a new oath, and deduct such new value from his debt.

LIX. *Mandatories for creditors may vote.*—The mandatory of any person entitled to vote as a creditor may vote in the absence of such creditor, provided he exhibit a mandate; and the vote of such mandatory shall, within his mandate, be held as the vote of the creditor himself.

LX. *Persons acquiring debts after sequestration not to vote.*—Any person who shall acquire after the date of the sequestration, otherwise than by succession or marriage, a debt due by the bankrupt, and the wife of the bankrupt and any trustee for her shall not be entitled to vote in the election of trustee or commissioners, but in all other respects such person may be ranked as a creditor.

3. *Special Rules as to Ranking for Payment of Dividends.*

LXI. *Valuation of securities with a view to a dividend.*—To entitle any creditor who holds a security or securities over any part of the estate of the bankrupt to be ranked in order to draw a dividend, he shall on oath put a specified value on such security, or, if required by the trustee, on each such security, and deduct such value or values from his debt, and specify the balance; and the trustee, with consent of the commissioners, shall be entitled to a conveyance or assignation of such security or securities, at the expense of the estate, on payment of the value or values so specified out of the first of the common fund, or to reserve to such creditor the full benefit of such security or securities; and in either case the creditor shall be ranked for and receive a dividend on the said balance, and no more, without prejudice to the amount of his debt in other respects: Provided that, if a co-obligant with or cautioner for the bankrupt is liable to the creditor and holds a security over any part of the estate of the bankrupt, such co-obligant or cautioner shall account for the security to the trustee as if he had paid the debt to the creditor and thereafter ranked on the sequestrated estate under deduction of the value of such security.

LXII. *Value of claim against a company to be deducted from claim against partners.*—When a creditor claims on the estate of the partner of a company in respect of a debt due by such company, the trustee on the estate of such partner shall, before ranking such creditor, put a valuation on the estate of the company, and deduct from the claim of such creditor such estimated value, and rank and pay to him a dividend only on the balance.

Election and Removal or Resignation of Trustee.

LXIII. *Appointment of meeting to elect a trustee.*—The Lord Ordinary or the Sheriff, by the deliverance which awards the sequestration, shall appoint a meeting of the creditors, to be held at a specified hour on a specified day, being not earlier than six nor later than twelve days from the date of the appearance in the *Gazette* of the notice of the award of sequestration, at a convenient place within the county of the Sheriff awarding sequestration, or to whom the sequestration is remitted, to elect a trustee or trustees in succession, and do the other acts hereinafter provided.

LXIV. *Procedure of meeting for election of trustee.*—Creditors or their mandatories, qualified as aforesaid, shall assemble at the time and place fixed for the election of trustee, with power to adjourn for such reasonable time as may seem fit, provided such adjournment do not postpone the meeting for the election of trustee beyond the limit of the period within which that meeting is by this Act appointed to be held; and if two or more creditors shall give notice to the Sheriff of the county, such Sheriff shall attend the meeting and adjourned meetings, and preside; and the sheriff-clerk or his depute shall also attend, and mark the oaths and productions with his initials, and write the minutes in the presence of the meeting, and enter therein the names and designations of the creditors present, or of the mandatories of creditors, and the amount for which they claim, and any other circumstances which the presiding Sheriff shall judge fit, which minutes the presiding Sheriff shall sign; and the clerk shall retain the oaths of the several claimants, subject to the exhibition thereof in his hands, till the election shall be determined, when he shall deliver the same to the trustee; and when the Sheriff is not present the creditors shall elect

a preses and (if the sheriff-clerk or a depute be not present) a clerk; and the preses shall mark the oaths and productions with his initials and sign the minutes; and the clerk shall, in the presence of the meeting, write the minutes, and enter therein the names and designations of the creditors or mandatories, and the amount for which they claim, and any other circumstances relating to the said meeting which the preses shall judge fit, which minutes the preses shall sign; and the creditors or their mandatories who have produced their oaths and documents of debt, and who have been entered in the minutes, shall then and there elect a fit person to be trustee, or two or more trustees, to act in succession, in case of non-acceptance, death, resignation, removal, or disqualification, and, in the case of the sequestration of the estates of a company and of the partners, one trustee for all the estates, or separate trustees on the estates of the company and on the estates of all or each of the individual partners or trustees in succession as aforesaid; and it shall not be lawful to elect as trustee the bankrupt, or any person conjunct or confident with the bankrupt, or who holds an interest opposed to the general interest of the creditors, or whose residence is not within the jurisdiction of the Court of Session.

LXV. *Judgment of Sheriff as to trustee.*—If the Sheriff be present at the election of trustee, and there be no competition for the office, or objection stated to the candidate or candidates, he shall, by a deliverance on the minutes, declare the person chosen by the creditors to be trustee, and, if there be competition or objections to the candidate or candidates, such objections to the votes or candidates shall be stated at the meeting, and the Sheriff may either forthwith decide thereon, or make avizandum, and he shall, if necessary, make a short note of the objections and of the answers, on which he shall, within four days after the meeting, hear parties *viva voce*, and declare the person or persons trustee or trustees in succession whom he shall find to have been duly elected, and state the grounds of his decision in a note, and the same, as well as such short note, shall form part of the process.

LXVI. *When Sheriff not present.*—When the preses has been elected by the creditors, such preses (whether there be any competition or objection or not) shall forthwith report the proceedings to the Sheriff; and the oaths of the several claimants shall, if the sheriff-clerk or his depute be present, remain in his possession, or, if he be not present, shall be transmitted to the sheriff-clerk by the preses, to be retained by him till the trustee shall be finally appointed, when he shall deliver the same to the trustee; and if there be no competition or objection, the Sheriff shall declare the person or persons elected trustee or trustees in succession; and, if there be competition or objection, the parties shall, within four days from the date of the said meeting, lodge in the hands of the sheriff-clerk short notes of objections, and the Sheriff shall forthwith hear parties thereon *viva voce*, and give his decision, and state the grounds thereof in a note, which note, as well as such short notes, shall form part of the process.

LXVII. *Judgment of Sheriff as to trustee final.*—The judgment of the Sheriff declaring the person or persons elected to be trustee or trustees in succession, shall be given with the least possible delay: and such judgment shall be final, and in no case subject to review in any Court or in any manner whatever.

LXVIII. *Expenses of competition for office of trustee.*—No part of the expense of any competition for the office of trustee shall be paid out of the estate, but all such expense shall be paid by the unsuccessful to the successful party.

LXIX. *Caution to be found by trustee.*—The creditors shall, at the meeting for election of a trustee, fix a sum for which the trustee shall find security for his intromissions and performance of the duties and rules hereby enacted, and shall also decide on the sufficiency of the caution offered; and the person declared to be trustee shall, within seven days of the date of the deliverance declaring his election, lodge with the sheriff-clerk a bond of caution, signed by the trustee and his cautioner, in the form of the Schedule C hereunto annexed, which bond shall be furnished to him by the sheriff-clerk: Provided that nothing hereinbefore contained shall be held or construed to prevent the creditors accepting the bond of a guarantee society in lieu of the bond of caution aforesaid: Provided also that, where such bond is so accepted, the premium payable thereon shall form a charge on the sequestrated estate.

LXX. *Act and warrant in favour of trustee—To be a complete title to him.*—On the decision of the Sheriff being given, declaring the person elected trustee, and on a bond by the trustee and his cautioner being duly lodged as aforesaid, the Sheriff shall confirm his election as trustee, which confirmation shall be final, and not subject to review in any Court or in any manner whatever; and the sheriff-clerk shall issue an act and warrant in the form of Schedule D hereunto annexed to the trustee, and shall, within three days thereafter, transmit a copy thereof to the accountant, who shall make an entry of the name and designation of the trustee in the register of sequestrations, and such act and warrant shall be an effectual title to the trustee to perform the duties hereby imposed on him, and shall be evidence of his right and title to the sequestrated estate, for the purposes of this Act; and a copy of such act and warrant in favour of the trustee, purporting to be certified by the sheriff-clerk, and to be authenticated by one of the judges of the Court of Session, shall be received in all Courts and places within England, Ireland, and His Majesty's other dominions as *prima facie* evidence of the title of the trustee, without proof of the authenticity of the signatures or of the official character of the persons signing, and shall entitle the trustee to recover any property belonging or debt due to the bankrupt, and to maintain actions in the same way as the bankrupt might have done if his estate had not been sequestrated.

LXXI. *Removal or resignation of trustee—Election of a new trustee.*—A majority in number and value of the creditors, present at any meeting duly called for the purpose, may remove the trustee, or accept of his resignation; and one-fourth of the creditors in value may at any time apply by petition to the Lord Ordinary or to the Sheriff for removal of the trustee, and the Lord Ordinary or the Sheriff shall order such petition to be served on the trustee, and intimated in the *Gazette;* and, if the Lord Ordinary or the Sheriff shall be satisfied that sufficient reason has been shown, he shall remove the trustee, and appoint a meeting of the creditors to be held for devolving the estate on the trustee next in succession, or electing a new trustee; and, if the trustee shall have been discharged, die, resign, or be removed, or remain at any one time for three months furth of Scotland, any commissioner, or any creditor ranked or claiming and entitled to be ranked on the estate, may apply to the Lord Ordinary or the Sheriff for an order to hold a meeting for devolving the estate on the trustee next in succession or electing a new trustee; and the Lord Ordinary or the Sheriff shall grant warrant to hold such meeting at a certain time and place, which shall be advertised in the *Gazette* by the commissioner or creditor so applying, and at the time and place so appointed the creditors at such meeting may devolve the estate on the trustee next in succession, or elect a new trustee; and, when the estate is devolved on such trustee, the creditors shall fix the amount for which he shall find security, and on a bond being lodged the Sheriff shall confirm him, and an act and warrant shall be issued and recorded in the same way and to the same effect as in the first election of a trustee; and in all cases of a new election of a trustee the procedure shall take place in the like manner as is hereinbefore provided in the case of the first election; and the succeeding or new trustee shall be vested with the powers and perform the duties and be subject to the same rules as are hereinbefore provided, and shall call to account the former trustee, or his heirs or representatives.

Election and Removal of Commissioners.

LXXII. *Election of commissioners.*—At the meeting for election of a trustee the creditors present or their mandatories shall, after the election of the trustee, elect three commissioners (if there be so many creditors who have claimed), who shall be either creditors or mandatories of creditors, and the like proceedings shall take place in regard to their election as is provided in regard to the election of trustee (except that they shall not be bound to find security); and the Sheriff shall decide who are the persons duly elected, and declare their election by a deliverance in the sederunt book, which decision shall be final, and shall entitle them to act without further confirmation, and a majority of them shall be a quorum: Provided that no person shall be eligible as a commissioner who is disqualified to be a trustee; and any mandatory who has been elected a commissioner shall lose that office, upon written intimation being sent by his constituent to the trustee that he has recalled the mandate, and the trustee shall immediately record the intimation in the sederunt book; and the trustee shall, in all cases where a commissioner has declined to act, died, resigned, or become incapacitated, call a meeting of creditors for the purpose of electing a new commissioner, and such commissioner shall be elected in manner hereinbefore provided.

LXXIII. *Removal of commissioners.* — A majority of the creditors assembled at any meeting duly called for that purpose may remove a commissioner, and may elect another in his place, in manner before directed.

Allowance to Bankrupt.

LXXIV. *Allowance to bankrupt.*—At the meeting for election of a trustee, or at the meeting held after the examination of the bankrupt, or at any meeting called for the purpose, four-fifths in value of the creditors present may authorise payment from time to time to the bankrupt, or to the partners of a company (if the sequestration be of a company estate) of such sum out of the estate as they shall think proper for sustenance, until the period assigned for payment of the second dividend, but such allowance shall not exceed three pounds three shillings per week to the bankrupt, or to each individual partner of a company, from the date of sequestration to the period aforesaid, and no allowance shall be given if the bankrupt shall not have complied with the provisions of this Act: Provided always that, if it shall at any time be the opinion of a majority of the creditors present at a regular meeting that it is for the interest of the estate that a special allowance should be further made to the bankrupt, and if the accountant shall report in its favour, it shall be competent for the Lord Ordinary or the Sheriff, on application by the trustee, with the said concurrence of creditors, and report by the accountant, to award such allowance, which shall then be payable out of the estate.

Duties of Trustee and Commissioners.

LXXV. *Record of abbreviate of his confirmation.*—The trustee, within ten days after his election is confirmed, shall present an abbreviate, signed by him or his agent, in the form of Schedule E No. 1, hereunto annexed, to the keepers of the registers of inhibitions and adjudications, who shall forthwith record the same, and write and subscribe a certificate on the said abbreviate in the form specified in the said Schedule E No. 2; and the like proceeding shall take place within ten days after the election of each new trustee shall be confirmed.

LXXVI. *Trustee to take possession of estate and books, and make up inventory.*—The trustee shall, as soon as may be after his appointment, take possession of the bankrupt's estate and

effects, and of his title deeds, books, bills, vouchers, and other papers and documents, and also make up an inventory of such estate and effects, and a valuation showing the estimated value and the annual revenue thereof, and shall forthwith transmit copies of such inventory and valuation to the accountant.

LXXVII. *Bankrupt to make up state of his affairs; and to give information and grant deeds.*—The bankrupt shall make up, and at the meeting appointed for the election of a trustee, deliver to the clerk of such meeting a state of his affairs, specifying his whole property, wherever situated, the property in expectancy or to which he may have an eventual right, the names and designations of his creditors and debtors, and the debts due by and to him, and a rental of his heritable property, which state and rental shall be subscribed by the bankrupt, and shall then be delivered to the trustee, and the same shall be engrossed in a sederunt book to be kept by the trustee; and the bankrupt shall at all times give every information and assistance necessary to enable the trustee to execute his duty; and, if the bankrupt fail to do so, or to grant any deed which may be requisite for the recovery or disposal of his estate, the trustee may apply to the Sheriff to compel him to give such information and assistance, and to grant such deeds, under the penalty of imprisonment and of forfeiture of the benefit of this Act, and, unless cause be shown to the contrary, the Sheriff shall issue a warrant of imprisonment accordingly.

LXXVIII. *Trustee to recover funds.*—The trustee shall manage, realise, and recover the estate belonging to the bankrupt, wherever situated, and convert the same into money, according to the directions given by the creditors at any meeting, and, if no such directions are given, he shall do so with the advice of the commissioners: Provided that, in order to the realisation of the interest of the bankrupt in any non-vested, contingent right or interest which under this Act is vested in the trustee, it shall be competent for the trustee to effect an insurance or insurances on the life of the bankrupt, and with that object in view to require the bankrupt to submit himself to a medical examination or examinations, and, if the bankrupt fail to do so, the trustee may apply to the Sheriff to compel him so to submit himself as provided in the immediately preceding section; and the trustee shall lodge all money which he shall receive in the course of such management, realisation, and recovery, in such bank as the majority of the creditors in number and value at any general meeting shall appoint, and failing such appointment in any joint stock bank of issue in Scotland (provided that the bank be not one in which the trustee shall be an acting partner, manager, agent, or cashier); and the money shall be lodged in the name of the trustee, in his official character under this Act; and such bank shall, once yearly at least, balance such account.

LXXIX. *Penalty on trustee retaining funds.*—If the trustee shall keep in his hands any sum exceeding fifty pounds belonging to the estate for more than ten days, he shall pay interest to the creditors at the rate of twenty pounds per centum per annum on the excess of such sum above fifty pounds for such time as the same shall be in his hands beyond ten days; and, unless the money has been so kept from innocent causes, the trustee shall be dismissed from his office, upon petition to the Lord Ordinary or Sheriff by any creditor, and have no claim to remuneration, and shall be liable in expenses.

LXXX. *Trustee to keep a sederunt book, and send copy of accounts to accountant.*—The trustee shall keep a sederunt book, in which he shall record all minutes of creditors and of commissioners, states of accounts, reports, and all the proceedings necessary to give a correct view of the management of the estate, and he shall also keep regular accounts of the affairs of the estate, and transmit to the accountant, before each of the periods herein assigned for payment of a dividend, a copy, certified by himself, of such accounts, in so far as not previously transmitted, and such copies shall be preserved in the office of the accountant; the trustees shall also transmit to the accountant copies of all circulars issued by him; the sederunt book and accounts shall be patent to the commissioners and to the creditors or their agents, at all times: Provided always that, when any document is of a confidential nature (such as the opinion of counsel on any matter affecting the interest of the creditors on the estate), the trustee shall not be bound to insert it in the sederunt book, or to exhibit it to any other person than the commissioners or the accountant.

LXXXI. *Duties of commissioners.*—The commissioners shall superintend the proceedings of the trustee, concur with him in submissions and transactions, give their advice and assistance relative to the management of the estate, decide as to paying or postponing payment of a dividend, and may assemble at any time to ascertain the situation of the bankrupt estate, and any one of them may make such report as he may think proper to a general meeting of the creditors.

LXXXII. *Judicial factor, trustee, and commissioners amenable to Lord Ordinary and Sheriff.*—The judicial factor, the trustee, and commissioners shall be amenable to the Lord Ordinary and to the Sheriff, although resident beyond the territory of the Sheriff, at the instance of any party interested, to account for their intromissions and management, by petition served on them; and, in case it shall appear that such application ought not to have been made, the party complained of shall be entitled to his full expenses, to be either retained out of the funds, or recovered from the party complaining, as the Lord Ordinary or the Sheriff shall direct.

Examination of Bankrupt.

LXXXIII. *Sheriff to name a day for bankrupt's examination.*—The trustee shall, within eight days after the date of the act and warrant confirming him, apply to the Sheriff to name a day for the public examination of the bankrupt, and the Sheriff shall issue his warrant for the bankrupt to attend for such

examination within the Sheriff Court House on a specified day and at a specified hour, being not sooner than seven days nor later than fourteen days from the date of the Sheriff's warrant; and on the Sheriff granting such warrant the trustee shall publish an advertisement, in terms of Schedule F hereunto annexed, in the *Gazette*, and send by post or otherwise special notice to every creditor who has lodged a claim, or who may be named n the bankrupt's state of affairs, intimating his name and designation, his election as trustee, the day, hour, and place fixed for the examination of the bankrupt, and also a specified day, being not sooner than seven days nor later than fourteen days after the day appointed for the examination of the bankrupt, and in the sequestration of the estates of a deceased debtor a meeting of creditors shall be called by the trustee by public advertisement and notice to each creditor, to be held not later than fourteen days after the date of such advertisement, and also the hour and place for holding a second meeting of the creditors, and shall also in the same notice intimate the period within which claims should be lodged.

LXXXIV. *Sheriff may grant warrant to bring bankrupt for examination.*—It shall be competent for the Sheriff to grant a warrant to apprehend the bankrupt, and bring him before the Sheriff for examination; and, if the bankrupt be imprisoned for a debt or other civil obligation within Scotland, the Sheriff may grant warrant to magistrates and gaolers, on receiving a duplicate of such warrant, and an acknowledgment for the person of the bankrupt, to deliver him to the officer presenting the same and they shall do so accordingly; which warrant shall be sufficient authority, either within or beyond the territory of the Sheriff in Scotland, to messengers-at-arms, and to the officers of the Sheriff, to apprehend, transmit, detain, and imprison, and to gaolers to deliver up, receive, and detain, the bankrupt, until his examination is concluded, and also for his re-transmission after examination to the gaol from which he was delivered up, and re-imprisonment therein; and, if the bankrupt cannot be brought from gaol, or cannot be examined by the Sheriff there, or is by a lawful cause prevented from attending at the time and place appointed, or is in custody on a criminal charge, or is abroad, the Sheriff may grant commission to take the examination; and the Sheriff or commissioner may, if he see cause, adjourn the examination of the bankrupt to an early day, to be then fixed; and the Sheriff may, on the application of the trustee, order the bankrupt to be examined as often as he shall see fit.

LXXXV. *Apprehension and transmission of the bankrupt when out of Scotland.*—If the bankrupt be in any part of Great Britain and Ireland other than Scotland, the Lord Ordinary may, on petition by the trustee, grant warrant to all judges, magistrates, justices of the peace, and officers of the law, to apprehend and transmit him to the place of his examination, and to enforce the same, which they are hereby required to do; and, if the bankrupt be in prison or custody, the Lord Ordinary may grant warrant as aforesaid to magistrates and gaolers, upon receiving a duplicate of such warrant, and an acknowledgment for the person of the bankrupt, to deliver him to the messenger or officer presenting such warrant, which they shall do accordingly; and such warrant shall be sufficient authority for the apprehension, transmission, detention, and imprisonment of the bankrupt (when necessary for his safe custody), and for his re-transmission after examination to and re-imprisonment in the prison or custody from which he was delivered up.

LXXXVI. *Examination of bankrupt's wife and others.*—The Sheriff may, at any time, on the application of the trustee, order an examination of the bankrupt's wife and family, clerks, servants, factors, law agents, and others, who can give information relative to his estate, on oath, and issue his warrant requiring such persons to appear; and, if they refuse or neglect to appear, when duly summoned, the Sheriff may issue another warrant to apprehend the person so failing to appear: Provided that, when such person is not the bankrupt, nor his wife, nor one of his family, nor his clerk or servant, no warrant for apprehension shall be issued until the expiration of eight days from the service of the first warrant, unless the trustee shall, on oath, specify a reasonable cause of belief that such person intends to leave the country to avoid the examination, in which case the Sheriff may forthwith issue such warrant; which several warrants shall be sufficient to authorise messengers-at-arms, or the officers of the Sheriff, to execute the same, either within or without the territory of the Sheriff in Scotland as aforesaid; and, if any person liable to be examined cannot attend, the Sheriff may grant commission to take his examination; and such examination, whether by the Sheriff or by a commissioner, may be adjourned, if it shall seem fit, to an early day, to be then fixed: Provided that persons, other than the bankrupt, summoned to attend for examination shall be entitled to such allowances as witnesses are in other cases entitled to, and the amount of which, if disputed, shall be fixed by the Sheriff.

LXXXVII. *Bankrupt and others must answer lawful questions, and produce documents.*—The bankrupt and such other persons shall answer all lawful questions relating to the affairs of the bankrupt; and the Sheriff may order such persons to produce for inspection any books of account, papers, deeds, writings, or other documents in their custody relative to the bankrupt's affairs, and cause the same, or copies thereof, to be delivered to the trustee.

LXXXVIII. *Mode of examination.*—The examination of the bankrupt, and of such other persons, shall be taken upon oath, and shall, except in the cases already specified, wherein a commission is allowed to be granted, take place before the Sheriff; and such examination shall be taken down in the manner prescribed by the Sheriff Courts (Scotland) Act, 1907 (7 Edw. VII. c. 51), and Rule 65 of the First Schedule to that Act shall apply accordingly; provided that the exam-

lination of the bankrupt shall in every case be authenticated in the ordinary way as a regular deposition, but that the examination of such other persons shall only be so authenticated if, in the opinion of the Sheriff, such authentication is necessary: Provided also that, if the trustee shall make application to that effect, the examination of the bankrupt and such other persons shall take place in open Court.

LXXXIX. *Penalty on refusal to answer, etc.*—If the bankrupt or any of such other persons shall refuse to be sworn, or to answer, to the satisfaction of the Sheriff, any lawful question put to him by the Sheriff or trustee, or by any creditor with the sanction of the Sheriff, or without lawful cause shall refuse to sign his examination, or to produce books, deeds, or other documents in his custody or power relating to the estate, the Sheriff may grant warrant to commit him to prison, there to remain until he comply with the order, which warrant shall specify the question and answer, book, deed, document, or the refusal to swear or to sign the examination; and such warrant shall not be subject to the review of the Court of Session, but the bankrupt or person imprisoned may apply by written petition (without argument) to the Lord Ordinary for a recall of the warrant, and the Lord Ordinary shall order the petition to be served on the trustee or the creditor and shall thereafter hear parties *viva voce*, and pronounce judgment.

XC. *Penalty on latent partner of bankrupt company not coming forward.*—If any latent partner of a company whose estates have been sequestrated shall not, by intimation to the trustee, acknowledge that he is a partner, on or before the day appointed for the examination of the known partners, he shall not be entitled to the benefits or privileges of this Act, unless in an application for the same he shall satisfy the Lord Ordinary or the Sheriff that the omission proceeded from innocent mistake, or ignorance of the proceedings, or reasonable misconception as to his liability as a partner, and unless he shall then follow out all necessary steps for remedying as far as possible the loss and inconvenience thence arising.

XCI. *Bankrupt may correct his state, and then must take oath inserted in this Act.*—The bankrupt, before the close of his examination, may make such additions to or alterations upon the state of his affairs as may have occurred to him to be necessary to give a full view of his affairs, which state, with the additions and alterations, shall be subscribed by the Sheriff and the bankrupt; and the bankrupt shall then take the following oath, which shall be engrossed in the sederunt book, and subscribed as aforesaid, as relative to such state; and when the bankrupt is a partner with others, and examined respecting the affairs of the partnership, the words of the oath shall so far be varied as to make it applicable to the case:

Oath.—"I do, in the presence of Almighty God, and as I shall answer to God at the great Day of Judgment, solemnly swear, that the state of my affairs subscribed by me as relative hereto contains a full and true account, to the best of my knowledge and belief, of all the debts, of whatever nature, due to me, and of all my estate and effects, heritable and moveable, real and personal, wherever situated (the necessary wearing apparel of myself, my wife, and family, only excepted), as well as of all claims which I am entitled to make against any person or persons whatsoever, and of all estate in expectancy, or means, of whatever kind, to which I have an eventual right by contract of marriage, trust deed, settlement, deed of entail, or otherwise; and that the said state likewise contains a full and true account of all debts due by me or demands upon me; and that I have delivered up the whole books, documents, accounts, title deeds, and papers of every kind belonging to me which in any way relate to my affairs, and which were or are in my possession or under my power; and that I have made a full disclosure of every particular relating to my affairs: And, further, I promise and swear, that I will forthwith reveal all and every other circumstance or particular relative to my affairs which may hereafter come to my knowledge, and which may tend to increase or diminish the estate in which my creditors may be interested, directly or indirectly."

Powers of Second and Subsequent Meetings of Creditors.

XCII. *Report by trustee after bankrupt's examination—Powers of creditors over estate.*—Prior to the meeting of creditors after the examination of the bankrupt, or, in the case of a deceased debtor, prior to the first meeting after the election of the trustee, the trustee shall prepare a report setting forth the state of the bankrupt's affairs, and an estimate of what the estate may produce, which report he shall exhibit at the meeting of creditors, and give all explanations relative thereto; and the creditors assembled at such meeting may receive an offer of composition, as hereinafter provided, and may, either at this or any other meeting, give directions for the recovery, management, and disposal of the estate; and, when any part of the estate consists of land or other heritable property, it shall be optional to the creditors to determine whether the trustee is to bring such property to judicial sale, or to dispose thereof by voluntary public sale, or by private sale, as hereinafter provided.

Calling of and Procedure at Meetings.

XCIII. *When meetings to be called.*—The trustee, or any commissioner with notice to the trustee, may at any time call a meeting of the creditors, and the trustee shall call such meeting, when required by one-fourth in value of the creditors ranked on the estate, or by the accountant.

XCIV. *Notice of meetings.*—Notice of the day, hour, place, and purpose of all meetings of creditors under this Act shall be advertised

in the *Gazette* seven days at least before the day of the meeting, and such meeting may be adjourned to the following day.

XCV. *No notice to be sent in certain cases.*—It shall not in any case be necessary to send any notification of the day or place of meetings by post to any creditor whose debt shall be under twenty pounds, unless such creditor shall have given directions in writing that such notification shall be sent; and no notification shall be sent to any creditor who has directed that none shall be sent.

XCVI. *Rules as to computing majorities.*—All questions at any meeting of creditors shall be determined by the majority in value of those present and entitled to vote, unless in the cases herein otherwise provided for; and when, for the purpose of voting, assenting or dissenting, the creditors are required to be counted in number, no creditor whose debt is under twenty pounds shall be reckoned in number, but his debt shall be computed in value.

EXTENT OF TRUSTEE'S RIGHT.

XCVII. *Vesting of estate in trustee.*—The act and warrant of confirmation in favour of the trustee shall *ipso jure* transfer to and vest in him or any succeeding trustee, for behoof of the creditors, absolutely and irredeemably, as at the date of the sequestration, with all right, title, and interest, the whole property of the debtor, to the effect following:—

(1) *Vesting of moveable estate.*—The moveable estate and effects of the bankrupt, wherever situated, so far as attachable for debt, or capable of voluntary alienation by the bankrupt, to the same effect as if actual delivery or possession had been obtained, or intimation made at that date, subject always to such preferable securities as existed at the date of the sequestration, and are not null or reducible:

(2) *Vesting of heritable estate in Scotland.*—The whole heritable estate belonging to the bankrupt in Scotland, to the same effect as if a decree of adjudication in implement of sale, as well as a decree of adjudication for payment and in security of debt, subject to no legal reversion, had been pronounced in favour of the trustee, and recorded at the date of the sequestration, and as if a poinding of the ground had then been executed, subject always to such preferable securities as existed at the date of the sequestration, and are not null and reducible, and the creditors' right to poind the ground, as hereinafter provided; and the right of the trustee shall not be challengeable on the ground of any prior inhibition (saving the effect which such inhibition may be entitled to in the ranking of the creditors): Provided always that such transfer and vesting of the heritable estate shall have no effect upon the rights of the superior, nor upon any question of succession between the heir and executor of any creditor claiming on the sequestrated estate, nor upon the rights of the creditors of the ancestor (except that the act and warrant of confirmation shall operate in their favour as complete diligence); and, if any part of the bankrupt's estate be held under an entail or by a title otherwise limited, the right vested in the trustee shall be effectual only to the extent of the interest in the estate which the bankrupt might legally convey, or the creditors attach:

(3) *Vesting of real estates in England, Ireland, and other British dominions.*—All real estate situated in England, Ireland, or in any of His Majesty's dominions, belonging to the bankrupt, and all interest in or regarding such real estate, which the bankrupt held, or to which he was entitled, to the same extent as would have happened if the bankrupt had been adjudicated bankrupt in England or Ireland, or in any of His Majesty's dominions respectively: Provided always that as regards all freehold, copyhold, and leasehold estate in England, Ireland, or any of His Majesty's dominions (except Scotland), the Act and warrant of confirmation shall be registered in the chief Court of Bankruptcy for the country in which the property is situated, in the like manner as an adjudication of bankruptcy or other similar process ought to be registered according to the law of that country, either in a separate book, or in the general book, as the Court of Bankruptcy shall order, to the intent that all persons concerned may have the same means of ascertaining whether any person has been adjudged a bankrupt according to the law of Scotland as they have or shall have of ascertaining whether any person has been adjudged a bankrupt according to the law for the time being of the country in which the property is situated; and no purchaser for valuable consideration of any freehold, copyhold, or leasehold estate (except in Scotland) shall be affected by any such bankruptcy until the act and warrant of confirmation shall have been so registered as aforesaid: Provided also that, where, according to the laws of England, Ireland, or other His Majesty's dominions, any deed or conveyance would require registration, enrolment, or recording, the act and warrant of confirmation shall be so registered, enrolled, or recorded according to the laws of England, Ireland, or other His Majesty's dominions; and, if any purchase is made by any person for valuable consideration, and without notice of

the sequestration, prior to the registration, enrolment, or recording of the said act and warrant of confirmation, such purchase shall not be invalidated by the existence of such act and warrant, or the subsequent registration, enrolment, or recording thereof:

(4) Any non-vested contingent right of succession or interest in property conceived in favour of the bankrupt under the will or settlement of any person deceased, or under marriage contract, or under any other deed, instrument, or writing of an irrevocable nature, to the same effect as if an assignation of such right or interest had been executed by the bankrupt and intimation thereof made at the date of the sequestration, subject always to such preferable securities as existed at that date and are not null or reducible.

XCVIII. *Acquisition of bankrupt after the sequestration to belong to the creditors. Alimentary provisions.*—(1) If any estate, wherever situated, shall, after the date of the sequestration, and before the bankrupt has obtained his discharge, be acquired by him, or descend or revert or come to him, the same shall *ipso iure* fall under the sequestration, and the full right and interest accruing thereon to the bankrupt shall be held as transferred to and vested in the trustee, as at the date of the acquisition thereof or succession, for the purposes of this Act; and the trustee shall, on coming to the knowledge of the fact, present a petition setting forth the circumstance to the Lord Ordinary or the Sheriff, who shall appoint intimation to be made in the *Gazette*, and require all concerned to appear within a certain time for their interest; and after the expiration of such time, and no cause being shown to the contrary, the Lord Ordinary or the Sheriff shall declare all right and interest in such estate which belongs to the bankrupt to be vested in the trustee, as at the date of the acquisition thereof or succession thereto, to the same effect as is hereinbefore enacted in regard to the other estates; and the proceeds thereof, when sold, shall be divided in terms of this Act; and, if the bankrupt do not immediately notify to the trustee that such estate has been acquired, or has come to him as aforesaid, he shall forfeit all the benefits of this Act, and it shall be competent to the trustee to examine him as aforesaid in relation thereto: Provided always that the rights of the creditors of the person from whom such estate shall come or descend to the bankrupt shall be reserved entire.

(2) Where the bankrupt is in right of an alimentary provision, it shall be competent to the Lord Ordinary, or the Sheriff, upon a petition by the trustee, to determine whether the amount of such provision is in excess of a suitable aliment to the bankrupt, in view of his existing circumstances, and, if he shall determine that it is, to fix the amount of the excess, and to order the same to be paid to the trustee as part of the property of the bankrupt falling under the sequestration: Provided that it shall be competent to the Lord Ordinary or the Sheriff, respectively, at any time thereafter, on the application of the trustee or of the bankrupt, to reconsider and to alter such order as he may deem fitting in the event of any change of circumstances which may make such alteration proper.

XCIX. *Subjects improperly included in sequestration may be struck out.*—Any person claiming right to any estate included in the sequestration may present a petition to the Lord Ordinary, or to the Sheriff, praying to have such estate taken out of the sequestration, and the Lord Ordinary, or the Sheriff, shall order the trustee to answer within a certain time, and on expiration of such time he shall proceed to dispose of the application.

C. *Trustee may complete feudal titles or grant such rights as bankrupt could do.*—The bankrupt shall, if required, grant all deeds necessary for recovering his property and feudally vesting his heritable estate in the trustee for the purposes of this Act; and, if the bankrupt's title to any estate has not been completed, the trustee may complete titles in his own person, whom failing, in favour of any trustee who may succeed him, for behoof of the creditors, or in the person of the bankrupt: Provided that such completion of title in the person of the bankrupt shall not have the effect of validating accretione unperfected rights in favour of any person other than the trustee in any such estate flowing from the bankrupt, and the trustee may, without making up a feudal title in his person, and without concurrence of the bankrupt, grant such conveyances of the heritable estate belonging to the bankrupt as the bankrupt might competently have granted, which conveyances shall be as effectual to the purchaser as if they had been granted by the bankrupt with concurrence of the trustee, and shall not be affected by any inhibition against the bankrupt, reserving the effect of such inhibition in the ranking.

CI. *Trustee may get property transferred to him, although the heir of the bankrupt has made up titles.—Decree to be recorded in the register of adjudications.*—When sequestration is awarded against the estate of a person after his death, and his successor has made up a title to his heritable estate, the trustee may apply by petition to the Lord Ordinary or the Sheriff, praying that such estate shall be transferred to and vested in him, and the Lord Ordinary or the Sheriff shall order the petition to be served upon such successor, and require him to answer the same within fourteen days; and an abbreviate of such petition and deliverance, in terms of the Schedule A. No. 3 hereunto annexed, being recorded in the registers of inhibitions and adjudications, shall have the effect of an inhibition and of a citation in an adjudication of the estate, and the keeper of the registers shall write on the said abbreviate a certificate in terms of the said Schedule A. No. 2; and, if on expiration of that period no cause is shown to the contrary, the Lord Ordinary or the Sheriff shall declare such estate to be transferred to and vested in the trustee, as at the date of the sequestration, to the same effect as is hereinbefore provided in

regard to the act and warrant of confirmation; and the trustee shall, within eight days thereafter, cause an abbreviate of such petition and deliverance to be recorded in the registers of inhibitions and adjudications, in terms of the Schedule E. No. 3 hereunto annexed, and the keeper of the said register shall write on such abbreviate a certificate in terms of the said Schedule E. No. 2.

CII. *Trustees' powers in relation to copyright.*—Where the property of a bankrupt comprises the copyright in any work or any interest in such copyright, and he is liable to pay to the author of the work royalties or a share of the profits in respect thereof, the trustee shall not be entitled to sell, or authorise the sale of any copies of the work, or to perform or authorise the performance of the work, except on the terms of paying to the author such sums by way of royalty or share of the profits as would have been payable by the bankrupt, nor shall he without the consent of the author or of the Court be entitled to assign the right, or transfer the interest, or to grant any interest in the right by licence, except upon terms which will secure to the author payments by way of royalty or share of profits at a rate not less than that which the bankrupt was liable to pay.

Effect of Sequestration on Ranking of Creditors.

CIII. *Sequestration equivalent to an adjudication in competition.*—The sequestration shall, as at the date thereof, be equivalent to a decree of adjudication of the heritable estates of the bankrupt for payment of the whole debts of the bankrupt, principal and interest, accumulated at the said date, and, when the sequestration is dated within year and day of any effectual adjudication, the estate shall be disposed of under the sequestration according to the provisions of this Act: Provided that nothing herein contained shall affect the rights of any heritable creditor holding a power of sale preferable to the powers of the trustee.

CIV. *And to arrestment and poinding—Diligence on or after sixtieth day before sequestration, or after it, ineffectual—Expenses of diligence.*—The sequestration shall, at the date thereof, be equivalent to an arrestment in execution and decree of forthcoming, and to an executed or completed poinding; and no arrestment or poinding executed of the funds or effects of the bankrupt on or after the sixtieth day prior to the sequestration shall be effectual; and such funds or effects, or the proceeds of such effects, if sold, shall be made forthcoming to the trustee: Provided that any arrester or poinder before the date of the sequestration who shall be thus deprived of the benefit of his diligence shall have preference out of such funds or effects for the expense *bona fide* incurred by him in procuring the warrant for and executing such diligence.

CV. *Interruption of prescription.*—The presenting of or concurring in a petition for sequestration, or the lodging a claim in the hands of the trustee, or the Sheriff, or preses at any meeting of creditors, shall interrupt prescription of the debt of the creditor so petitioning, concurring, or claiming, and in regard to such debt shall bar the effect of any statute of limitations in England or Ireland, or other His Majesty's dominions, and although this sequestration shall be recalled, such interruption or bar shall, notwithstanding, be effectual.

CVI. *Preferences in case of a deceased debtor.*—When the sequestration of the estates of a deceased debtor is dated within seven months after his death, any preference or security for any prior debt acquired by legal diligence on or after the sixtieth day before his death, or subsequent to his death, and any preference or security acquired for a prior debt by any act or deed of the debtor which has not been lawfully completed for a period of more than sixty days before his death, and any confirmation as executor-creditor after the debtor's death, shall, in these several cases, be of no effect in competition with the trustee; and the estates and effects over which such preferences or securities shall have been obtained, or of which confirmation shall have been expede, shall belong to the trustee: Provided that the creditor who is so deprived of the benefit of his diligence or confirmation shall have preference for payment out of the said estates or effects of the expenses *bona fide* incurred by him in such diligence or confirmation.

CVII. *Acts and payments by bankrupt after sequestration null, except in certain cases.*—All payments and preferences or securities obtained by or granted to prior creditors, and all acts done or deeds granted by the bankrupt after the date of the sequestration and before his discharge out of or in relation to the estate (unless with the consent of the trustee), shall, in the event of sequestration being awarded, be null and void; and the trustee shall be entitled to such preference or security, and to any money so paid, deducting any expense *bona fide* incurred; but if a *bona fide* purchaser is in possession of moveable effects received from the bankrupt after sequestration, but in ignorance thereof, and when ignorant thereof for a price paid, or which he is ready to pay, he shall not be obliged to restore the effects; and if a debtor, in ignorance of the sequestration, have paid his debt *bona fide* to the bankrupt, he shall not be obliged to pay it a second time to the trustee; and if the possessor of any bill or promissory note, which is payable by the bankrupt, with recourse on other parties, or of a security for a debt due by the bankrupt, shall have received payment of his debt from the bankrupt in ignorance of the sequestration, and given up such bill, promissory note, or security to the bankrupt, such person shall not be liable to repay to the trustee the amount so received, unless the trustee shall replace him in the situation in which he stood, or reimburse him for any loss or damage.

Realisation of Heritable Estate.

CVIII. *Sale of heritable estate by creditor.*—A creditor holding a security over the heritable estate of the bankrupt, preferable to the right of the trustee, with a power to sell, may sell,

in terms of his security, notwithstanding the sequestration, and it shall be competent to the trustee to concur therein in order to fortify the title; and the trustee or any posterior heritable creditor preferable to him may, by petition to the Lord Ordinary or to the Sheriff, compel the said creditor and the purchaser to account for any reversion of the price.

CIX. *Sale by trustee with concurrence of heritable creditors — Discharge of burdens on sale.*—If a creditor holding an heritable security, with a power to sell, concur with the trustee in bringing the estate to sale, the trustee shall sell the same in his own name, and the articles of roup and conveyance to the purchaser shall be executed by the trustee, with consent of such creditor and the commissioners; and the price shall be paid by the purchaser to the parties legally entitled thereto, and, in so far as not paid at the time of the delivery of the conveyance, it shall be consigned in the bank in which the money of the sequestrated estate is deposited; which payment or consignation of the price shall free and discharge the estate sold and the purchaser from the security of the consenting creditor, whether the debt in such security be satisfied or not, and from all securities postponed to the security of such creditor.

CX. *Sale by trustees alone.*—If the creditors, at the meeting held after the examination of the bankrupt, or at any other meeting called for the purpose, resolve that the trustee shall dispose of the heritable estate by public sale or bring it to judicial sale, and if such resolution has been made before an heritable creditor having a power of sale shall have commenced proceedings for sale, or if such proceedings, after being commenced prior to the date of such resolution, have thereafter been unduly delayed, such creditor shall not be entitled to interfere with the sale by the trustee; and, if a public sale of the heritable estate be resolved on, such sale shall be made by auction at the upset price and in the manner which shall be fixed by the trustee, with consent of the commissioners: Provided always that the estate shall not be sold for less than the upset price, and that such upset price shall not be less than sufficient to pay the debt, principal, interest, and expenses of the heritable creditor.

CXI. *Trustee may with approval of accountant sell by private bargain.*—It shall be competent for the trustee, with concurrence of a majority of the creditors in number and value, and of the heritable creditors, if any, and of the accountant, to sell the heritable estate by private bargain, on such terms and conditions regarding price and otherwise, as the trustee with concurrence of those parties, may fix; and the concurrence of the accountant shall be conclusive evidence that the concurrence of the requisite majority of creditors has been obtained.

CXII. *Trustee to make up a scheme of ranking and division of price.*—It shall be the duty of the trustee to make up a scheme of ranking and division of the claims of the heritable creditors and other creditors on the price of the heritable estate sold; and such scheme of ranking and division shall be reported by him to the Lord Ordinary or the Sheriff, and the judgment thereon shall be a warrant for payment out of the price against the purchaser of the heritable estate.

CXIII. *Court may grant interim warrant for payment out of price.*—It shall be competent for the Lord Ordinary or the Sheriff, on application by the trustee or any creditor interested, with a report thereon by the accountant, and on cause shown, to grant an interim warrant for payment of preferable claims out of the price of the estate, or to authorise an interim scheme of division out of the price, which scheme of division shall be disposed of as the scheme of division already provided for.

CXIV. *Heritable creditor's right to poind the ground limited.*—No poinding of the ground which has not been carried into execution by sale of the effects sixty days before the date of the sequestration, shall (except to the extent hereinafter provided) be available in any question with the trustee; and this section shall apply to all poindings of the ground by which moveables forming part of or belonging to a bankrupt estate, whether administered in Scotland or furth thereof, are sought to be attached or affected, and that whether the debts or securities in respect of which such poindings of the ground shall be brought shall have been constituted or granted by the bankrupt, or by any ancestor or predecessor of the bankrupt, or by any other person: Provided that no creditor who holds a security over the heritable estate preferable to the right of the trustee shall be prevented from executing a poinding of the ground after the sequestration, but such poinding shall, in competition with the trustee, be available only for the interest on the debt for the current half-yearly term, and for the arrears of interest for one year immediately before the commencement of such term.

CXV. *Landlord's hypothec saved.*—Nothing in this Act contained shall affect the landlord's right of hypothec.

CXVI. *Creditors may purchase.*—When any estate is sold publicly by virtue of this Act, it shall be lawful for any creditor to purchase the same; but the trustee or commissioners, or any law agent employed by the trustee in connection with the sequestration, or any partner of such law agent, shall not be entitled to purchase.

Payment of Dividends.

CXVII. *Realised estate to be a fund of division.*—The whole estate, when reduced into money, shall, unless otherwise provided in this Act, after paying all necessary charges and a commission to the trustee, be divided among those who were creditors of the bankrupt at the date of the sequestration, ranked according to their several rights and interests.

CXVIII. *Preferential payments.*—(1) In the division of a bankrupt's estate under the provisions of this Act the following shall be paid in priority to all other debts:—

(*a*) All poor or other local rates due by the bankrupt at the date hereinafter mentioned, and having become due and payable within twelve months next before that date, and all assessed

taxes, land tax, property or income tax assessed on the bankrupt up to the fifth day of April next before the said date, and not exceeding in the whole one year's assessment;

(*b*) All wages or salary of any clerk or servant in respect of service rendered to the bankrupt during four months before the said date not exceeding fifty pounds to any one clerk or servant;

(*c*) All wages of any workman or labourer not exceeding twenty-five pounds to any one workman or labourer, whether payable for time or for piece-work, in respect of services rendered to the bankrupt during two months before the said date: Provided that, where any labourer in husbandry has entered into a contract for the payment to him of a portion of his wages in a lump sum, the priority under this section shall extend to the whole of such sum or a part thereof as the Court may decide to be due under the contract proportionate to the time of service up to the said date;

(*d*) All sums (not exceeding in any individual case one hundred pounds) due in respect of compensation under the Workmen's Compensation Act, 1906 (6 Edw. VII. c. 58), the liability therefor accrued before the said date, subject nevertheless to the provisions of section five of that Act; and

(*e*) All contributions payable under the National Insurance Act, 1911 (1 & 2 Geo. V. c. 55), by the bankrupt in respect of employed contributors or workmen in an insured trade during the four months before the said date.

(2) The foregoing debts shall rank equally among themselves and shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.

(3) The trustee may, with the consent of the commissioners, dispense with the necessity for lodging oaths relative to the foregoing debts, and with the like consent may pay such debts before the period for payment of the first dividend.

(4) The date hereinbefore referred to in this section is the date of the award of sequestration, and, in the case of the sequestration of the estates of a deceased debtor, the date of his death, and, where sequestration has not been awarded, the date of the concourse of diligence for distribution of the estate of a party being notour bankrupt.

(5) Nothing in this section shall affect the provisions of the Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), or the preference attaching at common law to death-bed and funeral expenses.

(6) The Preferential Payments in Bankruptcy Act, 1888 (51 & 52 Vict. c. 62), shall not apply to Scotland, and references to the said Act, or to section three of the Bankruptcy (Scotland) Act, 1875 (38 & 39 Vict. c. 26), in any Act of Parliament, as regards Scotland shall be read and construed as references to this section.

CXIX. *Creditor to produce oath, etc., two months before payment of first dividend, and one month before subsequent dividends.*—To entitle any creditor to payment of the first dividend, he shall produce as is hereinbefore directed his oath and grounds of debt at least two months before the time fixed for payment of the first dividend, when such time of payment shall not have been accelerated, or one month before the time fixed for payment of the first dividend where such time shall have been accelerated; and, to entitle any creditor to payment of any of the subsequent dividends, he shall produce as aforesaid his oath and grounds of debt at least two months before the time fixed for payment of the dividend which he means to claim; provided that, if a creditor has not produced his oath and grounds of debt in time to share in the first dividend, but has done so in time to share in the second dividend, he shall be entitled, on occasion of payment of the second dividend, to receive out of the first of the fund (if there be sufficient for that purpose) an equalising dividend corresponding to the dividend he would have drawn if he had claimed in time for the first dividend; and the same rule shall apply as to all subsequent dividends.

CXX. *Creditors resident abroad may lodge oath at later periods.*—When any creditor not resident within Great Britain or Ireland at the date of the deliverance awarding sequestration, or at any time within five months thereafter, shall lodge his oath and grounds of debt fourteen days previous to any time fixed for payment of a dividend, though not in time to entitle such creditor to participate in such dividend, the trustee shall make such deduction from the divisible fund as shall be equal to the dividend which would have been payable to such creditor had his oath and grounds of debt been timeously lodged and his claim been sustained; and the sum so deducted shall form part of the fund for division on the occasion of payment of the next dividend.

CXXI. *Trustee to make up and exhibit to commissioners state of funds—Commissioners to resolve as to payment of dividend, etc.*—Immediately on the expiration of four months from the date of the deliverance actually awarding sequestration, unless the dividend is accelerated as hereinafter provided, the trustee shall proceed to make up a state of the whole estate of the bankrupt, of the funds recovered by him, and of the property outstanding (specifying the cause why it has not been recovered), and also an account of his intromissions, and generally of his management; and within fourteen days after the expiration of the said four months the commissioners shall meet and examine such state and account and ascertain whether the trustee has lodged the moneys recovered by him in bank or not, and, if he has failed to do so, they shall debit him with a sum at the rate of twenty pounds per annum on every hundred pounds not so lodged, and so after that rate on any larger or smaller sum,

being not less than fifty pounds; and they shall audit his accounts, and settle the amount of his commission or fee, and authorise him to take credit for such commission or fee in his accounts with the estate; and they shall certify, by a writing under their hands engrossed or copied in the sederunt book, the balance due to or by the trustee in his account with the estate as at the expiration of the said four months; and they shall declare whether any and what part of the net produce of the estate, after making a reasonable deduction for future contingencies, shall be divided among the creditors.

CXXII. *Trustee's commission to have approval of accountant.*—Every trustee appointed under this Act shall intimate by circular to every creditor upon the estates under his charge, and also to the bankrupt, the deliverance of the commissioners fixing a commission or fee to be allowed to such trustee, and every such trustee, and also every creditor and the bankrupt, shall be entitled to appeal to the accountant against any such deliverance within ten days of the issue of such circular by addressing a note to the accountant stating his objections to such deliverance, and the trustee shall thereupon lay the deliverance of the commissioners and the account to which such deliverance applies before the accountant, and such commission or fee shall not be paid to the trustee or entered in his account until the accountant has intimated his approval of the commission or other payments sanctioned by the commissioners. In the event of the accountant not concurring with the commissioners, he shall intimate his objections and the grounds thereof to the trustee or bankrupt or creditor appealing and shall indicate the sum he would suggest, and, in the event of the trustee or bankrupt or creditor or the commissioners not acquiescing in this suggestion, the matter shall be reported forthwith by the accountant to the Lord Ordinary or to the Sheriff, whose decision shall be final and, in the event of such appeal, the procedure enacted under sections one hundred and twenty-four, one hundred and twenty-seven, one hundred and twenty-eight, and one hundred and twenty-nine of this Act shall, in cases to which such sections apply, be postponed till the decision is given in the appeal, and, where the deliverance of the commissioners is altered, the trustee shall give effect to the alteration in his accounts, and the commissioners shall, in such cases, reconsider and declare within eight days after the date of the decision the amount to be divided among the creditors in terms of sections one hundred and twenty-one, one hundred and twenty-seven, one hundred and twenty-eight, and one hundred and twenty-nine of this Act after taking such alteration into account, and the trustee shall, within four days thereafter, and in cases where no alteration is made in the deliverance of the commissioners within eight days from the date of the decision, give the notice in the *Gazette* and give the notifications to creditors directed by sections one hundred and twenty-four, one hundred and twenty-seven, and one hundred and twenty-nine of this Act.

CXXIII. *Trustee to examine and to reject or admit claims, and make up list of creditors entitled to payment of dividend.*—The trustee may, at any time after a claim has been lodged, require further evidence in support thereof, for which purpose he may examine the bankrupt, any creditor, or any other party on oath relative thereto, and, where a dividend is to be paid, he shall, within the fourteen days mentioned in section one hundred and twenty-one of this Act, examine the oaths and grounds of debt, and in writing reject or admit them, or require further evidence in support thereof; and, in case he shall reject any claim, he shall in his deliverance state the grounds of such rejection: and he shall complete the list of the creditors entitled to draw a dividend, specifying the amount of their debts, with interest thereon to the date of the sequestration, and distinguishing whether they are ordinary creditors or preferable or contingent, and he shall make up a separate list of any creditors whose claims he has rejected in whole or in part.

CXXIV. *And to publish and send notices of payment of dividend—Creditors may appeal within a limited period.*—The trustee shall, within eight days after the expiration of such fourteen days, give notice in the *Gazette* of the time and place of the payment of the dividend, and also notify the same by letters put into the Post Office on or before the first lawful day after the said fourteen days, addressed to each creditor, in which he shall specify the amount of the claim and proposed dividend thereon, and when he has rejected any claim he shall notify the same to the claimant by letter as aforesaid, which letter shall also contain a copy of his deliverance, and specify the amount of the claim; and a certificate by the trustee or an execution by a messenger or sheriff officer that such letters have been put into the post office shall be sufficient evidence thereof; and, if any creditor be dissatisfied with the decision of the trustee, he may appeal by a short written note to the Lord Ordinary or to the Sheriff; but, if no such note be lodged with and marked by the Bill chamber or sheriff-clerk (as the case may be) before the expiration of fourteen days from the date of the publication in the *Gazette* of the said notice, the decision of the trustee shall be final and conclusive so far as regards that dividend; and, in case the claim have been rejected in whole or in part, such decision shall be without prejudice to any new claim being afterwards made in reference to future dividends, but which new claim shall not disturb prior dividends.

CXXV. *Trustee to make up a scheme of division.*—The trustee shall, before the expiration of six months from the date of the deliverance actually awarding sequestration, make up a scheme of division of the fund directed by the commissioners to be divided, and apportion the same, according to their respective rights, among those creditors whose claims have been sustained by him or by the Lord Ordinary or Sheriff, or who shall have appealed against his decision, and which scheme shall be patent to all concerned, and shall send notice to each creditor of the amount of the dividend to which he may be entitled.

CXXVI. *Dividends to be paid, and those disputed or claimed by contingent creditors to be lodged in bank.*—On the first lawful day after the expiration of six months from the date of the deliverance actually awarding sequestration, and at the place appointed, the trustee shall pay to the creditors the dividends allotted to them respectively in terms of the said scheme; and he shall lodge the dividends apportioned to those claims which are under appeal, but not finally determined, and the dividends effeiring to contingent creditors or other claimants, not then entitled to uplift the same, in the bank appointed by the creditors, or failing such appointment, in any joint stock bank of issue in Scotland in a separate account, or if the money be deposited in the bank, he shall transfer it to a separate account in name of himself and the commissioners, to remain therein until the said appeals be disposed of or the dividends become payable.

CXXVII. *Second dividend—Trustee to make up state, etc., and commissioners to resolve as in case of first dividend.*—On the expiration of eight months from the date of the deliverance actually awarding sequestration, the trustee shall again make up a state as hereinbefore provided, which he shall within fourteen days after the expiration of the said eight months exhibit to the commissioners, who shall meet and examine and audit the same, and perform the other acts and duties incumbent on them, in manner before specified, and direct a second dividend to be paid, if there shall be funds to pay the same; and, if the commissioners shall direct a dividend to be paid, the trustee shall also make up lists of the creditors who are entitled and who are not entitled to payment of the dividend, and frame a scheme of division, and notify in the *Gazette* and by letters, and any creditor may appeal, all as is hereinbefore provided with respect to the first dividend; provided that no appeal by a creditor shall be competent, unless the note of appeal be lodged within fourteen days of the date of notification in the *Gazette*.

CXXVIII. *Dividend to be paid.*—On the first lawful day after the expiration of ten months from the date of the deliverance actually awarding sequestration, the trustee shall make payment of the second dividend to those creditors who are entitled thereto, and shall lodge the dividend disputed or not then payable, all as hereinbefore provided with respect to the first dividend.

CXXIX. *Subsequent dividend—Same proceedings as in prior dividends.*—The procedure hereinbefore prescribed in reference to a second dividend shall be applicable in reference to subsequent dividends so that a dividend may be made on the first lawful day after the expiration of every three months from the day of payment of the immediately preceding dividend, until the whole funds of the bankrupt shall be divided.

CXXX. *Dividends may be accelerated in certain cases.*—The trustee and commissioners, with the consent of the accountant, may accelerate the payment of any dividend, if it shall be found expedient to do so, provided that the date for payment of the first dividend be not earlier than four months from the date of the deliverance actually awarding sequestration; and, when any such acceleration is made, the trustee and commissioners, with the consent of the accountant, are hereby authorised to make the requisite provision for the acceleration of any other matters which it may be necessary to accelerate in consequence thereof.

CXXXI. *Proceedings when commissioners postpone the dividend.*—If it shall appear to the commissioners that a dividend ought to be postponed, they may do so till the recurrence of another stated period for making a dividend, and they may, if they think fit, authorise the trustee to give a notice to that effect in the next *Gazette*.

CXXXII. *Where estate is chiefly land periods of payment may be altered.*—In cases where the sequestrated estate consists chiefly of land, and in any other cases where it may be necessary, it shall be competent for the Court of Session or the Lord Ordinary or Sheriff, on a special application by the trustee and commissioners, to authorise such alteration in the periods above mentioned for payment of dividends as shall be found most suitable to the circumstances of the case.

CXXXIII. *Winding up of estate.*—If on the lapse of twelve months from the date of the deliverance actually awarding sequestration it shall appear to the trustee and commissioners expedient to sell the heritable or moveable estates not disposed of, and any interest which the creditors have in the outstanding debts and consigned dividends, they shall fix a day for holding a meeting of the creditors to take the same into consideration; and the trustee, besides advertising the same in the *Gazette*, shall, fourteen days before the day appointed, send by post to each creditor claiming on the estate a notice of the time and place of the meeting, with a valuation of the estates and of the outstanding debts and the consigned dividends; and, if three-fourths in value of the creditors assembled at the meeting shall decide in favour of a sale, in whole or in lots, the trustee shall cause the estates, debts, and dividends to be sold by auction, after notice thereof published at least one month previous to the sale, once in the *Gazette*, and in such other newspapers as the creditors at the meeting shall appoint.

Discharge of Bankrupt.

1. *On Composition.*

CXXXIV. *Offer of composition may be made at the meeting for election of trustee.*—At the meeting for election of trustee, the bankrupt or his friends, or, in case of his decease, his successors, and, in case of a company, one or more of the partners thereof, may offer a composition to the creditors on the whole debts, with security for payment of the same; and, if the majority of the creditors in number and three-fourths in value present at such meeting shall resolve that the offer and security shall be entertained for consideration, the trustee shall forthwith advertise in the *Gazette* a notice that an offer of composition has been so made

and entertained, and that it will be decided upon at the meeting to be held after the examination of the bankrupt, and shall specify the hour, day, and place, and also transmit by post letters to each of the creditors claiming on the estate, or mentioned in the bankrupt's state of affairs, containing a notice of such resolution, and of the day and hour at which, and the place where, such meeting is to be held, and specifying the offer and security proposed, and giving an abstract of the state of the affairs and of the valuation of the estate, so far as the same can be done, to enable the creditors to judge of such offer and security.

CXXXV. *Offer, if entertained, to be disposed of at the meeting after the bankrupt's examination —Lord Ordinary or Sheriff to approve.*—If at the meeting held after the examination of the bankrupt a majority in number and three-fourths in value of the creditors there assembled shall accept such offer and security, a bond of caution for payment of the composition, executed by the bankrupt or his successors, or the partners of a company (as the case may be), and the proposed cautioner, shall be forthwith lodged in the hands of the trustee; and the trustee shall thereupon subscribe and transmit a report of the resolution of the meeting, with the said bond, to the Bill Chamber clerk or sheriff-clerk, in order that the approval of the Lord Ordinary or Sheriff (whichever may be selected by the trustee) may be obtained thereto; and, if the Lord Ordinary or the Sheriff, after hearing any objections by creditors, shall find that the offer, with the security, has been duly made, and is reasonable, and has been assented to by a majority in number and three-fourths in value of all the creditors assembled at the said meeting, he shall pronounce a deliverance approving thereof; provided that he shall hear any objection by opposing creditors, and, if he shall refuse to sustain the offer or reject the vote of any creditor, he shall specify the grounds of refusal or rejection.

CXXXVI. *Offer of composition may also be made at meeting after bankrupt's examination.* —In like manner, at the meeting held after the examination of the bankrupt, or at any subsequent meeting called for the purpose by the trustee, with the consent of the commissioners, the bankrupt, or his friends, or, in case of his decease, his successors, or any of them, and, in the case of a company, one or more of the partners thereof, may offer a composition to the creditors on the whole debts, with security for payment of the same; and, if a majority in number and three-fourths in value of the creditors present shall resolve that the offer and security shall be entertained for consideration, the trustee shall call another meeting to be held at a specified hour on a specified day, being not less than twenty-one days thereafter, and at a specified place, and shall, seven days at least before such other meeting, send by post letters addressed to each of the creditors who have claimed on the estate or are mentioned in the bankrupt's state of affairs, which letter shall contain a notice of such resolution, and of the hour, day, and place, and purpose of the meeting, and specify the offer and security proposed, and give an abstract of the state of the affairs and valuation of the estate, so far as can be done, to enable the creditors to judge of such offer; and, if at the meeting so called a majority in number and three-fourths in value of the creditors present shall accept the said offer and security, a bond of caution shall be lodged and a report made, and a deliverance pronounced, all in the same manner and to the same effect as is hereinbefore provided.

CXXXVII. *Bankrupt on making declaration or oath to obtain his discharge.*—On such deliverance being pronounced, approving of the composition in either of the cases above specified, the bankrupt, or, if deceased, his successor or other party offering the composition, shall make a declaration, or, if required by the trustee or any creditor, an oath, before the Lord Ordinary or the Sheriff (as the case may be), that he has made a full and fair surrender of his estate, and has not granted or promised any preference or security, or made or promised any payment, or entered into any secret or collusive agreement or transaction, to obtain the concurrence of any creditor to such offer and security; and, if the bankrupt shall be at the time beyond the jurisdiction of the Lord Ordinary or Sheriff, or is by a lawful cause prevented from appearing before the Lord Ordinary or Sheriff, commission may be granted to any fit person to take such declaration or oath; and the Lord Ordinary or the Sheriff (as the case may be), on being satisfied with such oath or declaration, shall pronounce a deliverance discharging the bankrupt of all debts and obligations contracted by him, or for which he was liable at the date of the sequestration, and shall declare the sequestration to be at an end, and the bankrupt reinvested in his estate (reserving always the claims of the creditors for the said composition against him and the cautioner); and the bond of caution shall be recorded in the books of the Court of Session, or, when such deliverance is pronounced by the Sheriff, in the books of the Sheriff Court; and the clerk of the Bills or the sheriff-clerk, shall forthwith transmit a signed extract of such deliverance to the accountant, who shall preserve the same, with the copy of the proceedings in the sequestration transmitted to him, as herein provided; and such deliverance of the Lord Ordinary or of the Sheriff shall operate as a complete discharge and acquittance to the bankrupt in terms thereof, and shall receive effect within Great Britain and Ireland and throughout His Majesty's other dominions, and an entry thereof shall be made by the accountant in the register of sequestrations.

CXXXVIII. *Trustee's accounts to be audited before the composition be approved of.*—Before the Lord Ordinary or the Sheriff shall pronounce the deliverance approving of the composition, the commissioners shall audit the accounts of the trustee, and ascertain the balance due to or by him, and fix the remuneration for his trouble, subject to the review of the Lord Ordinary or the Sheriff, if complained of by the trustee, the bankrupt, or any of the creditors; and the expense attend-

ing the sequestration and such remuneration shall be paid or provided for to the satisfaction of the trustee and commissioners before such deliverance is pronounced.

CXXXIX. *Sequestration to go on, notwithstanding offer of composition.*—Notwithstanding such offer of composition and proceeding consequent thereon, the sequestration shall continue, and the trustee shall proceed in the execution of his duty as if no such offer had been made, until the deliverance by the Lord Ordinary or the Sheriff be pronounced, when the sequestration shall cease and be at an end, and the trustee be exonered and discharged: Provided, nevertheless, that the trustee and his cautioner shall be liable, on petition to the Lord Ordinary or Sheriff by the bankrupt or his cautioner for the composition, to account for his intromissions and other acts as trustee.

CXL. *Bankrupt and cautioner not to be entitled to object to certain debts.*—Neither the bankrupt nor, in case of his decease, his successor, offering the composition, nor the cautioner for the composition, shall be entitled to object to any debt which the bankrupt has given up in the state of his affairs as due by him, or admitted without question to be reckoned in the acceptance of the offer of composition, nor to object to any security held by any creditor, unless in the offer of composition such debt or security shall be stated as objected to, and notice in writing given to the creditor in right thereof.

CXLI. *Claims against cautioner limited in certain cases to two years.*—No person who has not produced an oath as a creditor before the date of the deliverance approving of the composition shall be entitled to make any demand against the cautioner after the space of two years from the date of such deliverance, reserving to such creditor his claim for the composition against the bankrupt and his estate.

CXLII. *If offer of composition rejected, no other to be entertained unless nine-tenths of creditors ranked shall agree.*—If an offer of composition have been made and rejected, or have become ineffectual, no other offer of composition shall be entertained unless nine-tenths in number and value of all the creditors ranked or entitled to be ranked on the estate shall assent in writing to such offer, which offer shall state the amount of composition and the terms of payment, and be subscribed by the cautioner proposed, in which case a meeting shall be called in manner before directed by the trustee for finally disposing of the same; and, if at the meeting so called a majority in number and nine tenths in value of the creditors present shall accept such offer and security, and the same shall be assented to by nine-tenths in value of all the creditors who have produced oaths as aforesaid, a bond of caution shall be lodged and a report made, and deliverances pronounced, and the other proceedings shall take place and have effect in the same manner as is hereinbefore provided for other offers of composition.

2. *Without Composition.*

CXLIII. *Proceedings for this purpose—May be discharged with consent of creditors—After two years may be discharged without consent.*—The bankrupt may, at any time after the meeting held after his examination, petition the Lord Ordinary or the Sheriff to be finally discharged of all debts contracted by him before the date of the sequestration, provided that every creditor who has produced his oath as aforesaid shall concur in the petition; and the bankrupt may also present such petition on the expiration of six months from the date of the deliverance actually awarding sequestration, provided a majority in number and four-fifths in value of the creditors who have produced oaths concur in the petition, and the bankrupt may also present such petition on the expiration of twelve months from the date of the deliverance actually awarding sequestration, provided a majority in number and two-thirds in value of the creditors concur in the petition; and the bankrupt may also present such petition on the expiration of eighteen months from the date of the deliverance actually awarding sequestration, provided a majority in number and value concur in the petition; and the bankrupt may also present such petition on the expiration of two years from the date of the deliverance actually awarding sequestration without any consents of creditors; and the Lord Ordinary or the Sheriff, as the case may be, shall, in each of the cases aforesaid, order the petition to be intimated in the *Gazette* and to each creditor; and if, at the distance of not less than twenty-one days from the publication of such intimation, and on evidence being produced of concurrence as aforesaid, where such concurrence is required, there be no appearance to oppose the same, the Lord Ordinary, or the Sheriff, as the case may be, shall pronounce a deliverance finding the bankrupt entitled to a discharge; but, if appearance be made by any of the creditors or by the trustee, the Lord Ordinary or the Sheriff, as the case may be, shall judge of any objections against granting the discharge, and shall either find the bankrupt entitled to his discharge, or refuse the discharge, or defer the consideration of the same for such period as he may think proper, and may annex such conditions thereto as the justice of the case may require: Provided that it shall not be competent for the bankrupt to present a petition for his discharge, or to obtain any consent of any creditor to such discharge, until the trustee shall have prepared a report with regard to the conduct of the bankrupt, and as to how far he has complied with the provisions of this Act, and, in particular, whether the bankrupt has made a fair discovery and surrender of his estate, and whether he has attended the diets of examination, and whether he has been guilty of any collusion, and whether his bankruptcy has arisen from innocent misfortunes or losses in business, or from culpable or undue conduct; and such report shall be prepared by the trustee as soon as may be after the bankrupt's examination, but shall not be demandable from the trustee till the expiration of five months from the date of the deliverance actually awarding sequestration; and such report shall be produced in the proceedings for the bankrupt's

discharge, and shall be referred to by its date, or by other direct reference, in any consent to his discharge; and the trustee shall forthwith engross, in the sederunt book of the estate, a copy of his said report.

CXLIV. *Bankrupt to make a declaration or oath before obtaining discharge.*—If the bankrupt shall be found entitled to his discharge he shall make a declaration, or, if required by the trustee or any creditor, an oath, before the Lord Ordinary or Sheriff, that he has made a full and fair surrender of his estate, and has not granted or promised any preference or security, nor made or promised any payment, nor entered into any secret or collusive agreement or transaction, to obtain the concurrence of any creditor to his discharge; and, if the bankrupt shall be at the time beyond the jurisdiction of the Lord Ordinary or Sheriff, or is by lawful cause prevented from coming before the Lord Ordinary or Sheriff, commission may be granted to any fit person to take such declaration or oath; and the Lord Ordinary or the Sheriff, as the case may be, on being satisfied with such declaration or oath, shall pronounce a deliverance discharging the bankrupt of all debts and obligations contracted by him or for which he was liable at the date of the sequestration; and, when the deliverance discharging the bankrupt is pronounced by the Lord Ordinary or Sheriff, the clerk of the Bills or the sheriff-clerk shall forthwith transmit a signed extract thereof to the accountant, who shall preserve the same with the copy of the proceedings in the sequestration transmitted to him, and such deliverance by the Lord Ordinary or the Sheriff shall operate as a complete discharge and acquittance to the bankrupt in terms thereof, and shall receive effect within Great Britain and Ireland and all His Majesty's other dominions; and an entry thereof shall be made by the accountant in the register of sequestrations.

CXLV. *Abbreviate of discharge of bankrupt.*—An abbreviate of the deliverance of discharge of the bankrupt, whether following on a composition or not, shall be issued by the clerk of the Bills or the sheriff-clerk, in the form of Schedule E No. 4 hereto annexed, and the abbreviate shall be recorded in the registers of inhibitions and adjudications, and the keeper of such registers shall, if required, write and subscribe a certificate on the said abbreviate in the form specified in Schedule E No. 2 hereto annexed.

CXLVI. *Restriction of right to discharge.*—Notwithstanding anything herein contained—

(1) A bankrupt shall not at any time be entitled to be discharged of his debts, unless it is proved to the Lord Ordinary or the Sheriff, as the case may be, that one of the following conditions has been fulfilled:—

(*a*) That a dividend or composition of not less than five shillings in the pound has been paid out of the estate of the bankrupt, or that security for payment thereof has been found to the satisfaction of the creditors; or

(*b*) That the failure to pay five shillings in the pound, as aforesaid, has, in the opinion of the Lord Ordinary or the Sheriff, as the case may be, arisen from circumstances for which the bankrupt cannot justly be held responsible:

(2) In order to determine whether either of the aforesaid conditions has been fulfilled, the Lord Ordinary or the Sheriff, as the case may be, shall have power to require the bankrupt to submit such evidence as he may think necessary, in addition to the declarations or oaths, as the case may be, made by the bankrupt under sections one hundred and thirty-seven and one hundred and forty-four of this Act, and the report made by the trustee under section one hundred and forty-three of this Act, and to allow any objecting creditor or creditors such proof as he may think right:

(3) Any deliverance of the Lord Ordinary or Sheriff, as the case may be, under this section, shall be subject to appeal in the manner provided in sections one hundred and sixty-seven and one hundred and sixty-six of this Act: Provided always that the judgment of the Inner House of the Court of Session on any such appeal shall be final and not subject to review:

(4) In the event of a discharge being refused under the provisions of this section, the bankrupt shall, at any time, if his estate shall yield or he shall pay to his creditors such additional sum as will, with the dividend or composition previously paid out of his estate during the sequestration, make up five shillings in the pound, be entitled to apply for and obtain his discharge in the same manner as if a dividend of five shillings in the pound had originally been paid out of his estate.

CXLVII. *This Act not to extend to discharge Crown debtors, etc., unless Treasury give consent.*—This Act shall not extend to discharge any person with respect to any debt due to His Majesty, or to any debt or penalty with which he shall stand charged at the suit of the Crown or any person for any offence committed against any Act or Acts relative to any branch of the public revenue, or at the suit of any Sheriff or other public officer upon any bail bond entered into for the appearance of any person prosecuted for any such offence, unless the Treasury shall consent to such discharge.

CXLVIII. *Pay, half pay, and pensions of bankrupts to be applicable for the benefit of creditors.*—The Lord Ordinary or Sheriff may order such portion of the pay, half pay, salary, emolument, or pension of any bankrupt as on communication from the Lord Ordinary or Sheriff to the Treasury, the Secretary of War, or the Admiralty, or the Commissioners of Customs and Excise, or the chief officers of the department to which such bankrupt may belong, or may have belonged, or under which such pay, half pay, salary, emolument,

or pension may be enjoyed by such bankrupt, or to the Secretary of State for India, they respectively may, under their hands, or under the hand of their respective chief secretary, or other chief officer for the time being, consent to in writing, to be paid to the trustee in order that the same may be applied in payment of the debts of such bankrupt; and such order and consent being lodged in the office of His Majesty's Paymaster General, or of any other officer or persons appointed to pay or paying any such half pay, salary, emolument, or pension, such portion of the said pay, half pay, salary, emolument, or pension as shall be specified in such order and consent shall be paid to such trustee until the Lord Ordinary or Sheriff shall make order to the contrary.

CXLIX. *Refusal of application for discharge by Court of Session, etc.*—Notwithstanding anything hereinbefore contained, the Lord Ordinary or the Sheriff may refuse the application for the discharge of any bankrupt, although two years have elapsed from the date of the sequestration, and although no appearance or opposition shall be made by or on the part of any of the creditors, if it shall appear from the report of the accountant or other sufficient evidence that the bankrupt has fraudulently concealed any part of his estate or effects, or has wilfully failed to comply with any of the provisions of this Act.

PREFERENCES AND COLLUSIONS FOR PROCURING DISCHARGE TO BE VOID.

CL. *Preferences, payments, and collusive agreements for discharge to be void.*—All preferences, gratuities, securities, payments, or other consideration not sanctioned by this Act, granted, made, or promised, and all secret or collusive agreements and transactions, for concurring in, facilitating, or obtaining the bankrupt's discharge, either on or without an offer of composition, and whether the offer be accepted or not, or the discharge granted or not, shall be null and void; and, if during the sequestration any creditor shall have obtained any such preference, gratuity, security, payment, or other consideration or promise thereof, or entered into such secret or collusive consideration or agreement or transaction, the trustee shall be entitled to retain his dividend, and he or any creditor ranked on the estate may present a petition to the Lord Ordinary or to the Sheriff, praying that such creditor shall be found to have forfeited his debt, and be ordained to pay to the trustee double the amount of the preference, gratuity, security, payment, or other consideration given, made, or promised, and, if no cause be shown to the contrary, decree shall be pronounced accordingly; and the sums which in such case may be recovered shall, under deduction of the expenses of recovering the same, be distributed by the trustee among the other creditors under the sequestration; and, if the sequestration shall have been closed, it shall be competent to any creditor who shall not have received full payment of his debt to raise a multiplepoinding in name of the person who has obtained such preference, gratuity, security, payment, or other consideration or promise as aforesaid, and on the value of the preference, gratuity, or security, or amount of the sum paid or consideration obtained, being ascertained, double such value or amount, together with the amount of the dividend of the colluding creditor, shall be ordered to be consigned by him, and shall be divided among the creditors who were ranked or were entitled to be ranked in the sequestration, and have not received full payment of their debts, and who shall lodge claims in such multiplepoinding, according to their respective rights and interests; and such multiplepoinding shall be executed in terms of law against the colluding creditor, and notice thereof at the same time be inserted in the *Gazette;* and in the event of there being any surplus, after paying the full debts of the creditors, and defraying the expenses of the sequestration or other proceeding, the same shall be paid into the account of unclaimed dividends, as hereinafter provided.

CLI. *Bankrupt to forfeit privileges, if participant in giving such preferences, etc.*—If the bankrupt shall have been personally concerned in or cognisant of the granting, giving, or promising any preference, gratuity, security, payment, or other consideration, or in any secret or collusive agreement or transaction as aforesaid, he shall forfeit all right to a discharge and all benefits under this Act, and such discharge, if granted, either on or without an offer of composition, shall be annulled; and the trustee or any one or more of the creditors may apply by petition to the Lord Ordinary to have such discharge annulled accordingly.

TRUSTEE'S DISCHARGE.

CLII. *Proceedings for this purpose.*—After a final division of the funds, the trustee shall call a meeting of the creditors by an advertisement in the *Gazette*, to be held not sooner than fourteen days after such publication, specifying the time, place, and purpose of holding the meeting, and by letters addressed by post to every creditor who has produced an oath as aforesaid, to consider as to an application for his discharge, and at such meeting he shall lay before the creditors the sederunt book and accounts, with a list of unclaimed dividends, and the creditors may then declare their opinion of his conduct as trustee, and he may thereafter apply to the Lord Ordinary or the Sheriff, who, on advising the petition, with the minutes of the meeting, and hearing any creditor, may pronounce or refuse decree of exoneration, and the clerk of the Bills or the sheriff-clerk shall forthwith transmit to the accountant a signed extract of such decree, which shall be entered in the register of sequestrations, and the bond of caution for the trustee delivered up.

CLIII. *Trustees to lodge unclaimed dividends, etc., in bank—Claimants showing right to apply to accountant for authority to receive dividends—Transfer of unclaimed dividends, etc., to Remem-*

brancer.—(1) Every trustee in any sequestration shall, before his discharge, transmit the sederunt book to the accountant, who shall thereupon direct the trustee to deposit the unclaimed dividends and any unapplied balances in the same bank in which money received by him was lodged under the provisions of this Act; and the trustee shall forthwith transfer the whole dividends not then claimed and any unapplied balances to such bank, and transmit the deposit receipts therefor to the accountant; and the unclaimed dividends shall be entered by such bank in an account to be kept under the title of "Account of Unclaimed Dividends"; and a book or books shall be kept in the office of the accountant, to be entitled "The Register of Unclaimed Dividends," containing a list, with the names arranged alphabetically, of all the creditors entitled to such unclaimed dividends, and specifying the bank in which each such unclaimed dividend is deposited, which shall be patent to all persons; provided that it shall not be necessary for the accountant to enter in detail in the said register the names of those creditors whose unclaimed dividends do not respectively exceed one pound sterling.

(2) After the discharge of the trustee, it shall be competent to any person, producing evidence of his right, to apply to the accountant for authority to receive any such dividend which has been deposited in terms of this section within seven years immediately preceding the date of such application and for which the deposit receipt is still in the custody of the accountant; and, on the accountant being satisfied of the claimant's right, a warrant shall be granted by him for payment of such dividend, whereof he shall make an entry in the said register, and upon such warrant the bank shall pay the same with any interest which may have accrued thereon.

(3) The accountant shall, at the expiry of seven years from the date of deposit of any unclaimed dividend or unapplied balance deposited in terms of this section, hand over the deposit receipt or other voucher therefor to the King's and Lord Treasurer's Remembrancer, who shall thereupon obtain payment in the manner and on the conditions specified in the Court of Session Consignations (Scotland) Act, 1895 (58 & 59 Vict. c. 19), of the amount due, principal and interest, from the bank in which the deposit was made, and the keeping of an interest account of unclaimed dividends shall be discontinued, and each bank shall, on this Act coming into operation, pay over to the said Remembrancer the whole amounts standing at the credit of that account in the books of the bank; and a receipt under the hand of the said Remembrancer shall be a sufficient discharge to the accountant for the duties imposed on him by this section and to the said banks for the payments so made by them.

CLIV. *Law accounts to be taxed.*—All accounts for law business incurred by the trustee shall, before payment thereof by the trustee, be submitted for taxation to the auditor of the Court of Session, or to the auditor of the Sheriff Court of the county in which the sequestration was carried on, as may be directed by a general meeting of the creditors.

CLV. *Surplus to be paid to bankrupt.*—Any surplus of the bankrupt's estate and effects that may remain after payment of his debts, with interest, and the charges of recovering and distributing the estate, shall be paid to the bankrupt, or to his successors or assignees.

The Accountant.

CLVI. *Accountant to keep register of sequestrations.*—The accountant shall keep a book, entitled "The Register of Sequestrations," in the general form of Schedule G hereunto annexed, but with such additional heads as he may find necessary, which book shall be patent to all concerned, and he shall regularly enter therein the Division of the Court to which any sequestration awarded in the Court of Session is appropriated, or the Sheriff awarding sequestration and the Sheriff to whom the sequestration is remitted, the date of the first deliverance on every petition of sequestration, whether in the Court of Session or Sheriff Court, the name and designation of the debtor, the place and county of his residence, dwelling-house, or place of business, and the name and designation of the petitioning or concurring creditor, the date of awarding or recalling sequestration, the time and place appointed for the election of the trustee and commissioners, the name and designation of the trustee and commissioners, the bankrupt's discharge on composition or otherwise, and the trustee's discharge, for which purpose the clerks of the Bill Chamber and the sheriff-clerk of each county shall transmit forthwith to the accountant a certified copy of the first deliverance in sequestrations awarded in the Court of Session and Sheriff Courts respectively, and the sheriff-clerk of each county shall, every six months, transmit to the accountant the particulars necessary to enable him to make such entries, and the trustee shall be bound when required to furnish such particulars to the sheriff-clerk.

CLVII. *Trustee to make an annual return to sheriff-clerk, and the sheriff-clerk to the accountant.*—Each trustee shall, within fourteen days after the thirty-first day of December in each year, or on the first lawful day after expiry of the said fourteen days, deliver, free of expense, to the sheriff-clerk of the county, a return in the form of the Schedule H hereunto annexed, of every sequestration in which he is trustee; and the sheriff-clerk shall, within fourteen days thereafter, transmit, in the form of the said schedule, to the accountant, a return of all the sequestrations depending in the sheriffdom whereof he is clerk; and the accountant shall cause the returns so made to be regularly bound up and preserved, according to the alphabetical order of counties, in a volume to be kept at all times in his office, with an index thereto, framed by him, and which volume shall be patent to all concerned; and any trustee who shall fail to make such return shall be removable from his office at the instance of any one creditor, or of the accountant, or subject to such censure as

the Lord Ordinary or the Sheriff may think suitable, and be found liable in expenses.

CLVIII. *Accountant to take cognisance of the conduct of trustees and commissioners.* — The accountant shall take cognisance of the conduct of trustees and commissioners in all sequestrations, and, in the event of their not faithfully performing their duties and duly observing all rules and regulations imposed on them by statute, Act of Sederunt, or otherwise relative to the performance of those duties, or in the event of any complaint being made to him by any creditor in regard thereto, he shall inquire into the same, and, if not satisfied with the explanation given, he shall report thereon to the Lord Ordinary or the Sheriff, who, after hearing such trustees or commissioners thereon, and investigating the whole matter, shall decide, and shall have power to censure such trustees or commissioners, or remove them from their office, or otherwise to deal with them as the justice of the case may require.

CLIX. *To superintend annual returns.*—The accountant shall superintend the annual returns required by this Act from trustees, and frame an annual report to the Court of Session, showing the state of each depending sequestration returned to him, which report may be published in the *Gazette*, or otherwise as the Court shall direct; and the accountant shall have power, on the application of one or more of the creditors, or of his own accord, to require exhibition of the sederunt book in any sequestration, and of any vouchers or documents which he may think necessary, and to direct that a meeting of the creditors shall be called to take any measures under consideration which he may judge requisite for the preservation or due management of the estate or more speedy realisation and division of the funds or winding up of the estate. On the expiry of five years from the date of the last proceeding in any sequestration, such sequestration shall cease to be a depending sequestration within the meaning of this section.

CLX. *To report disobedience.*—The accountant shall, at all times when requisite, report to the Lord Ordinary or the Sheriff any disobedience by the trustee or commissioners of any requisition or order by him, and generally any matter which he may deem it necessary for the due discharge of his office to bring before the Lord Ordinary or the Sheriff, and it shall be competent for the Lord Ordinary or the Sheriff to deal summarily with the matter reported, as accords of law.

CLXI. *To give information to Lord Advocate.* —If the accountant shall possess information that shall lead him, on reasonable grounds, to suspect fraudulent conduct by the bankrupt, or malversation or misconduct on the part of the trustee or commissioners, such as may infer punishment, he shall be entitled to give information to the Lord Advocate, who shall direct such inquiry and take such proceedings therein as he shall think proper.

CLXII. *In case of illness, etc., of accountant, Lord President to appoint a deputy.*—In case of the illness or temporary absence of the accountant, the Lord President of the Court of Session may authorise any one of the accountant's clerks or other qualified person to discharge the duties of the office for the time.

Judicial Power for winding up the Estates of Parties deceased.

CLXIII. *Application for judicial factor on estates of persons deceased.*—It shall be competent to one or more creditors of parties deceased, or to persons having an interest in the succession of such parties, in the event of the deceased having left no settlement appointing trustees or other parties having power to manage his estate or part thereof, or in the event of such parties not accepting or acting, to apply by summary petition to either Division of the Court of Session or, where the assets of the deceased are estimated not to exceed five hundred pounds, to the Sheriff of the sheriffdom within which the deceased resided or carried on business during the year immediately preceding the date of the petition, or within which heritage belonging to the deceased at the time of his death is situated, for the appointment of a judicial factor, and after such intimation of the petition to the creditors of the deceased, and other persons interested, as may be considered necessary, and after hearing parties, the Lord Ordinary or Sheriff may appoint such factor, who shall administer the estate subject to the supervision of the accountant in accordance with the Judicial Factors (Scotland) Acts, 1880 (43 & 44 Vict. c. 4) and 1889 (52 & 53 Vict. c. 39), and relative Acts of Sederunt, and in case of an insolvent estate shall divide the same among the creditors thereof in accordance with the rules as to ranking obtaining in sequestrations in virtue of the provisions of this Act.

CLXIV. *Judicial factor's duties to be regulated by Act of Sederunt.*—The Court shall have full power to regulate by Act of Sederunt the caution to be found by such factor, the mode in which he shall proceed in realising and dividing the funds, and otherwise in the discharge of his duties, and any other matter which they may deem necessary.

Judicial Proceedings.

CLXV. *Appeals, etc., against resolutions of creditors and deliverances of trustees to the Lord Ordinary or Sheriff.*—It shall be competent to appeal against the resolutions of the creditors at meetings either to the Lord Ordinary or the Sheriff, provided a note of appeal shall be lodged with and marked by one of the clerks of the Bill Chamber within fourteen days after the date of the meeting at which the resolution objected to has been passed, or (as the case may be) in the hands of and marked by the sheriff-clerk within the like period; and it shall in like manner be competent to appeal against any deliverance of the trustee or commissioners to the Lord Ordinary or the Sheriff, provided the note of appeal shall be lodged and marked as aforesaid within fourteen days from the date of the deliverance; and, where any such appeal is made, or where any petition or complaint is presented against the trustee or

commissioners, or against any of the creditors, the Lord Ordinary or the Sheriff (as the case may be) shall appoint a copy thereof, and of his deliverance thereon, to be served on the respondent, or his mandatory or known agent, and appoint the respondent to appear at a specified diet within such period as may be reasonable; and the Lord Ordinary or the Sheriff (as the case may be) shall at such diet hear parties *viva voce*, and the Lord Ordinary shall proceed to dispose of the case, with or without a record, as he shall consider best; and the Sheriff, without a record, may decide, provided he shall specify the facts, and assign the grounds of his judgment; but, if he shall see cause, he may order minutes to be lodged by the parties, containing their averments in fact and pleas in law, without argument, and may hold the same as a closed record, and proceed in a summary way, and in pronouncing his judgment he shall assign his reasons; and it shall be competent to the Lord Ordinary or the Sheriff, if they shall think fit, where any resolution of a meeting of the creditors is appealed against, to order a new meeting to be held, in order to reconsider the resolution.

CLXVI. *Review of Sheriff's judgments.* — It shall be competent to bring under the review of the Inner House of the Court of Session, or before the Lord Ordinary in time of vacation, any deliverance of the Sheriff, after the sequestration has been awarded (except where the same is declared not to be subject to review), provided a note of appeal be lodged with and marked by the sheriff-clerk, within eight days from the date of such deliverance, failing which, the same shall be final; and such note, together with the process, shall forthwith be transmitted by the sheriff-clerk to the clerk of the Bill Chamber; and the Lord Ordinary's decision shall, when not expressly made final by this Act, be subject to review of the Inner House; and it shall be competent to the Inner House or the Lord Ordinary to remit to the Sheriff, with instructions.

CLXVII. *Review of Lord Ordinary's judgments.*—Where any judgment of the Lord Ordinary is to be brought under review of the Inner House, the same shall be done by a reclaiming note in common form presented within fourteen days from the date of the judgment; and such reclaiming note shall be disposed of by the Inner House as speedily as the forms of Court will allow.

CLXVIII. *Regulation by Sheriff of interim possession.*—During the dependence of appeals or petitions and complaints, it shall be competent to the Sheriff to give such orders as may be necessary to regulate the interim possession and administration of the estate.

CLXIX. *Appeals to House of Lords.*—If any appeal shall be made to the House of Lords, the sequestration shall, in all respects not inconsistent with or injurious to the interests which may be affected by the appeal, proceed without interruption, and the Lord Ordinary shall make such orders as may be necessary to regulate the interim possession and management of the estate, and which orders shall not be subject to appeal.

CLXX. *Deliverances, extracts, and copies shall form evidence.*—All deliverances under this Act purporting to be signed by the Lord Ordinary or by any of the judges of the Court of Session, or by the Sheriff, as well as all extracts or copies thereof or from the books of the Court of Session or the Sheriff Court purporting to be signed or certified by any clerk of Court, or sheriff-clerk, or extracts from or copies of registers purporting to be made by the keeper thereof, or extractor, shall be judicially noticed by all Courts and judges in England, Ireland, and His Majesty's other dominions, and shall be received as *prima facie* evidence, without the necessity of proving their authenticity or correctness, or the signatures appended, or the official character of the persons signing, and shall be sufficient warrants for all diligence and execution by law competent.

CLXXI. *Deliverances, etc., may be printed—Service of citations.*—All deliverances, bonds, schedules, and executions under this Act may be either printed or in writing, or partly both; and service or citation may be made by a competent officer without witnesses, or as directed in the Citation Amendment (Scotland) Act, 1882 (45 & 46 Vict. c. 77).

CLXXII. *Trustees and commissioners may compound and transact.*—The trustee may, with consent of the commissioners, compound and transact or refer to arbitration any questions which may arise in the course of the sequestration regarding the estate, or any demand or claim made thereon, and the compromise, transaction, or decree arbitral shall be binding on the creditors and the bankrupt.

CLXXIII. *Agents in Court of Session may be agents in causes under this Act before Sheriff.*—It shall be lawful for all agents, duly qualified to practise before the Court of Session, to practise in all Sheriff Courts, in so far as relates to any of the proceedings authorised by this Act to be carried on before the Sheriff; provided that they shall not be entitled to payment of any higher fees than those legally exigible in such Courts.

Summary Sequestrations.

CLXXIV. *Summary sequestrations.*—Where a debtor's assets of every description do not in the aggregate exceed three hundred pounds in value, his estate may be wound up under a summary sequestration as provided in the two following sections of this Act, and, subject to the provisions of the said two sections, all the other provisions of this Act shall apply to summary sequestrations.

CLXXV. *Petition for summary sequestration.*—(1) Subject to the provisions of subsection (2) of this section, every petition for summary sequestration shall be presented to the Sheriff of any sheriffdom within which the debtor has resided or carried on business during the year immediately preceding the date of the petition, and may be at the instance of the debtor, without the concurrence of any creditor, or, where the debtor is notour bankrupt, and within four months after the constitution of notour bankruptcy, at the instance of one creditor, whose claim amounts to ten pounds or upwards, or of two or more creditors whose

claims in the aggregate amount to ten pounds or upwards.

(2) Where the petition is at the instance of one or more creditors, who do not know within which sheriffdom the debtor resided or carried on business during the year immediately preceding the date of the petition, or if the debtor be furth of Scotland, then the petition may be presented to the Court of Session in the Bill Chamber.

(3) With every petition for summary sequestration at the instance of the debtor he shall lodge in the hands of the sheriff-clerk a short state of his affairs, subscribed by himself, which state of affairs shall specify the particulars required by section seventy-seven of this Act.

(4) The first deliverance on every petition for summary sequestration at the instance of one or more creditors shall, in addition to a warrant to cite, contain an order on the debtor, ordaining him, within six days after the service of the said order, to lodge in the hands of the sheriff-clerk, or clerk of the Bills, as the case may be, a short state of his affairs, subscribed by himself, which state of affairs shall specify the particulars required by section seventy-seven of this Act.

(5) The judge to whom a petition for summary sequestration is presented may refuse the petition, with or without expenses, or may award sequestration: Provided that, if he award sequestration, such sequestration may be recalled in accordance with the provisions of this Act.

(6) Where the judge, to whom a petition for summary sequestration is presented, awards sequestration he may either order that the sequestration shall proceed as a summary sequestration or (if from the fact that the state of affairs lodged by the bankrupt shows that the assets exceed three hundred pounds in value, or for some other reason, he be of opinion that it is not expedient that the sequestration so proceed) he may make no such order, and in the latter case the provisions of this section and of sections one hundred and seventy-four and one hundred and seventy-six of this Act shall no longer apply. The decision of the judge under this subsection shall be final on the question whether the sequestration is or is not to proceed as a summary sequestration, without prejudice to the sequestration being recalled in accordance with the provisions of this Act.

CLXXVI. *Procedure in summary sequestrations.*—The procedure enacted in this Act with regard to sequestration shall, in its application to summary sequestrations, be modified to the extent and effect following (that is to say):—

(1) The trustee, within seven days after the date of deliverance declaring his election, shall apply orally to the Sheriff to fix a diet for the examination of the bankrupt, and the Sheriff shall by deliverance ordain the bankrupt to appear for public examination within the Sheriff Court House on a specified day and at a specified hour, and at the diet so appointed the bankrupt shall appear in public Court, in presence of the Sheriff for examination:

(2) As soon as the trustee obtains his act and warrant, he shall take possession of all the property of the bankrupt and also of all his books and papers:

(3) Not less than seven days prior to the diet fixed for the public examination of the bankrupt, the trustee shall give notice to the bankrupt requiring him to attend the said diet and shall also give notice in the *Gazette*, and he shall also post to each creditor, who has lodged a claim, or who is mentioned in the bankrupt's state of affairs, or is otherwise known to the trustee, a circular, which notice and circular shall intimate the trustee's name and designation, his appointment as trustee, the day, hour, and place fixed for the examination of the bankrupt, the period within which claims should be lodged, and also a specified day, hour, and place for holding a second meeting of creditors:

(4) Creditors shall transmit their oaths and claims and grounds of debt to the trustee, not less than twenty-one days before the said second meeting:

(5) Where a dividend is to be made, the trustee shall, not less than fourteen days prior to the said second meeting, adjudicate upon the claims of the creditors, admitting or rejecting them in whole or in part, and he shall prepare a list thereof, with his deliverance thereon, which list, with the claims, vouchers, and whole process, shall be open to inspection by the bankrupt, and by the creditors, and, where the trustee shall reject in whole or in part any claim, he shall post notice thereof to the creditor ten days at least before the said second meeting of creditors:

(6)—(*a*) (1) Where the bankrupt or any creditor intends to object to any deliverance by the trustee, admitting in whole or in part any claim, or (2) where any creditor intends to object to any deliverance, ranking any other creditor, or (3) where a creditor intends to object to a deliverance, rejecting in whole or in part his claim, the bankrupt or the objecting creditor respectively shall, in the first or second case, give notice to the trustee and to any creditor whose claim is objected to, and in the third case to the trustee, of his intention and of the nature and particulars of the objection, by registered letter, posted three days at least before the said second meeting, and there shall be produced a copy of the letter of notice and the post-office receipt for the letter at the said meeting:

(*b*) Where such notice has been given, the trustee shall apply orally to the Sheriff to fix a diet for the summary

disposal of such objections, and, upon the diet being fixed, the sheriff-clerk shall issue to the bankrupt, the trustee, or to any creditor desiring to lead evidence, a diligence to cite witnesses and havers for that and any adjourned diet. The Sheriff may, when necessary, grant second diligence:

(c) At the diet so fixed for hearing objections the Sheriff shall hear parties *viva voce*, and after such proof, if any, as he may allow (which proof shall be recorded if desired by any of the parties), shall dispose of the objections summarily, and settle the ranking of the creditors so objected to. The Sheriff may adjourn consideration of any of the matters mentioned in this subsection to another diet or diets:

(d) In his interlocutor disposing of the objections, the Sheriff shall issue findings in fact and in law on which his judgment proceeds.

Where the proof has not been recorded, the Sheriff's findings in fact shall be final, and any party dissatisfied with the Sheriff's judgment may appeal against his findings in law in the manner provided in section one hundred and sixty-six of this Act, and, where the proof has been recorded, any creditor may appeal against the Sheriff's findings in fact and in law in the manner provided in section one hundred and sixty-six of this Act:

(7) At the second meeting of creditors the trustee shall attend, and the creditors may also attend by themselves or their mandatories, and the trustee and commissioners may fix a date for payment of the first or final dividend, or may postpone payment of a dividend to a date not later than three months after the date of the said second meeting:

(8) If, at the second meeting, it is apparent to the trustee and commissioners—

(1) that, in consequence of appeals against any deliverance by the trustee, it is inexpedient to fix a time for declaring a dividend, the trustee and commissioners may determine to declare a dividend as soon after the objections have been disposed of as in their opinion it is expedient to do so; or

(2) that there will be no funds for division among the creditors, the creditors shall direct the trustee to report orally to the Sheriff, and, failing such direction, the trustee may then, or at any subsequent period, orally report to the Sheriff that there will be no funds for division, who may thereupon, in writing, dispense with any further procedure in the summary sequestration:

(9) Ten days at least prior to the date fixed for the payment of a dividend, the trustee's accounts, with relative vouchers, shall be submitted to the commissioners for audit, and shall be approved of or modified and adjusted by the commissioners, who shall fix the trustee's remuneration, subject to review by the accountant at the instance of the trustee or the bankrupt or any creditor, provided that, if the trustee or any creditor intends to appeal against the deliverance of the commissioners, the appellant must intimate his appeal to the accountant within six days after the date of the deliverance appealed against, and the accountant may hear parties *viva voce*, and shall, as soon as convenient, issue his deliverance, which shall be final, and he may find any of the parties liable in expenses; the amount of which expenses (if any) he shall fix in his deliverance. The law agent's account shall be taxed by the auditor of the Sheriff Court previous to the meeting of commissioners and shall be produced thereto:

(10) If at any time subsequent to the payment of the first or any subsequent dividend the trustee shall have in hand funds, or shall be about to come into possession of funds which will admit of a dividend to the creditors, it shall be the duty of the trustee and commissioners to fix a date for payment of the second or any subsequent dividend; but, before making up a state of ranking for any such second or subsequent dividend, the trustee shall insert a notice in the *Gazette* not less than thirty days prior to the date fixed for the payment of the said second or subsequent dividend, and specifying a date not less than fourteen and not more than twenty-one days before the date fixed for payment of a second or subsequent dividend, as the last date for lodging claims in order to participate in the second or subsequent dividend; the trustee shall also send notice to any creditor mentioned in the debtor's state of affairs, or known to him, who has previously failed to lodge his claim, intimating the proposed dividend and stating the last day for lodging claims, and, if new claims be lodged, the trustee shall adjudicate thereon subject to an appeal as provided by subsection (6) of this section, and, if in consequence of the said new claims, or from any other cause, the state of ranking shall require to be remodelled, the trustee shall remodel the same in accordance with the provisions of subsection (5) of this section, and any additional accounts of the trustee or law agents shall be previously taxed and adjusted, all as hereinbefore provided: Provided that, in the application of the provisions of subsections (5) and (6) of this section to claims for second or subsequent dividends and deliver-

ances and appeals relative thereto, the date for payment of the dividend shall be substituted for the second meeting: Provided further that the trustee and commissioners may, in the event of an appeal in terms of this subsection, postpone the payment of the dividend until after such appeal is finally determined:

(11) Any creditor who may have failed to lodge his claim in time to participate in any previous dividend or dividends shall, if he lodges his claim in time, be entitled to an equalising dividend as well as to the new dividend upon the amount of the claim which may be sustained:

(12) The trustee, or any creditor with the consent of the trustee and commissioners or with the consent of the commissioners alone, may, at any time, call a meeting of creditors to consider and dispose of any matters to be specified in the notice calling such meeting:

(13) In every summary sequestration, unless the trustee shall have previously been discharged, he shall, within ten days after the expiry of six months after the date of his act and warrant, transmit to the accountant a report in duplicate of the state of such summary sequestration, specifying (1) the amount of the funds recovered, (2) the amount of the dividend or dividends paid, (3) the amount and nature of the assets not realised, (4) the reason or reasons which have prevented him from realising the said assets, and (5) an estimate of the time when, in his opinion, these assets will be realised, and the accountant may call on the trustee for any written or oral explanations the accountant may wish to obtain, and the accountant shall engross on each of the said duplicates a docquet expressing approval or disapproval of the reasons given by the trustee for failing to realise the said assets. One duplicate the accountant shall retain, and he shall deliver the other to the trustee, who shall engross the said report and docquet in the sederunt book of the estate, and the trustee shall likewise within ten days after the expiry of three months after the date of his first or any subsequent report under this subsection, transmit to the accountant an additional report specifying the particulars set forth in this subsection, which additional report shall be dealt with in the same manner as is provided with regard to the first report:

(14) After the final division of the funds, or in any case where the Sheriff has, in writing, dispensed with further procedure in a summary sequestration, the trustee may apply to the accountant for a certificate that he is entitled to his discharge, and he shall deliver to the accountant the sederunt book and accounts, with a list of unclaimed dividends, if any, and the accountant may, if he be satisfied that the trustee has complied with the one hundred and fifty-third section of this Act, and with the provisions of this Act applicable to summary sequestrations and is otherwise entitled to be discharged, and upon deposit in bank of any unclaimed dividends and unapplied balances as directed by section one hundred and fifty-three of this Act, grant to the trustee a certificate under his hand setting forth that the trustee is entitled to obtain his discharge:

(15) On obtaining the said certificate, the trustee shall orally report the fact to the Sheriff, who shall fix a diet for hearing any objections which may be made to the trustee obtaining his discharge, and the trustee shall publish in the *Gazette* seven days at least prior to the diet so fixed for hearing objections, a notice intimating the same, and, if the bankrupt or any creditor shall appear at the diet so fixed, parties shall be heard *viva voce*, or if the Sheriff thinks it expedient he may make a note of any objection, and of the trustee's answer thereto, and after such proof, if any, as he may allow, he may dispose of the objections summarily by granting or refusing the trustee his discharge. The Sheriff may adjourn consideration of any matters mentioned in this subsection to any other diet or diets, and he may grant warrant to cite witnesses and havers, and, in the event of the discharge being granted, the Sheriff's judgment shall be final, and he shall issue an interlocutor exonerating and discharging the trustee of all his actings and intromissions, and shall order his bond of caution to be cancelled and delivered up, and the sheriff-clerk shall forthwith transmit to the accountant a signed extract of the discharge:

(16) If the Sheriff refuses to grant the trustee his discharge, the trustee may appeal against his judgment in the manner provided by section one hundred and sixty-six of this Act:

(17) Where the Sheriff has in writing dispensed with further procedure in a summary sequestration, the bankrupt may at any time petition the Sheriff for his discharge, and the provisions of this Act relating to the discharge of a bankrupt (except the provisions as to the periods at which the bankrupt may so petition and as to the consent of creditors) shall apply.

CLXXVII. *Summary procedure not to apply to existing sequestrations.*—The provisions of the three immediately preceding sections of this Act shall not apply to any sequestration awarded before the commencement of this Act.

PUNISHMENT OF FRAUDULENT DEBTORS.

CLXXVIII. *Punishment of fraudulent debtors.*—The debtor, in a process of sequestration, shall be deemed guilty of a crime and offence, and on conviction before the Court of Justiciary, or before the Sheriff and a jury, shall be liable to be imprisoned for any time not exceeding two years, or by the Sheriff summarily for any time not exceeding six months, with or without hard labour:—

(A) In each of the cases following, unless he proves to the satisfaction of the Court that he had no intent to defraud, that is to say—

(1) If he does not, to the best of his knowledge and belief, fully and truly disclose the state of his affairs in terms of this Act:

(2) If he does not deliver up to the trustee all his property, and all books, documents, papers, and writings relating to his property or affairs which are in his custody or under his control, and which he is required by law to deliver up, or if he does not deal with and dispose of the same according to the directions of the trustee:

(3) If, after the presentation of the petition for sequestration, or within four months next before such presentation, he conceals any part of his property, or conceals, destroys, or mutilates, or is privy to the concealment, destruction, or mutilation of any book, document, paper, or writing relating to his property or affairs:

(4) If after, or within, the time above specified, he makes or is privy to the making of any false entry in, or otherwise falsifying any book, document, paper, or writing affecting or relating to his property or affairs:

(5) If within four months next before the presentation of the petition for sequestration he pawns, pledges, or disposes of otherwise than in the ordinary way of trade, any property which he has obtained on credit and has not paid for:

(6) If, being indebted to an amount exceeding two hundred pounds at the date of the presentation of the petition for sequestration, he has not for three years next before such date, if he has been three years in business, and if he has been less than three years in business then from the time he commenced business, kept such books or accounts as are necessary to exhibit or explain his transactions.

(B) In each of the cases following—

(1) If, knowing or believing that a false claim has been made by any person under the sequestration, he fails for the period of a month from the time of his acquiring such knowledge or belief to inform the trustee thereof:

(2) If, after the presentation of the petition for sequestration, or at any meeting of his creditors within four months next before such presentation, he attempts to account for any part of his property by fictitious losses or expenses:

(3) If, within four months next before the presentation of the petition for sequestration, he, by any false representation or other fraud, has obtained any property on credit and has not paid for the same:

(4) If, after the date of awarding sequestration, or within four months prior thereto, he absconds from Scotland, or makes preparations to abscond for the purpose of avoiding examination or other proceedings at the instance of his creditors, or taking with him property which ought by law to be divided amongst his creditors to the amount of twenty pounds or upwards, or if he fails, having no reasonable excuse (after receiving due notice), to attend the public examination appointed by the Sheriff, or to submit himself for examination in terms of this Act:

(5) If, being insolvent, and with intent to defraud his creditors, or any of them, he makes or causes to be made any gift, delivery, or transfer of, or any charge on or affecting his property:

(6) If he fails without reasonable excuse to deliver or lodge in process in obedience to any order lawfully served upon him, a state of his affairs subscribed by him, giving the particulars specified in the said order.

CLXXIX. *False claim a crime and offence.*—If any creditor under any petition for sequestration wilfully, and with intent to defraud, makes any false claim, or makes or tenders any proof, affidavit, declaration, or statement of account which is untrue in any material particular, he shall be deemed guilty of a crime and offence, and may be dealt with and punished as if he had been guilty of a crime and offence under section one hundred and seventy-eight, subsection (B), of this Act, and that section shall apply accordingly.

CLXXX. *Trustee to report to Lord Advocate.*—It shall be the duty of the trustee in any process of sequestration, if he has reasonable grounds to suspect that the bankrupt has been guilty of any offences under this Act, to report the same to the Lord Advocate, who shall direct such inquiry and take such proceedings as he shall think fit.

CLXXXI. *Offences punishable otherwise.*—Where any person is liable under any other Act of Parliament or at common law to any punishment or penalty for any offence made punishable by this Act, such person may be proceeded against under such other Act of Parliament or at common law or under this

Act, so that he be not punished twice for the same offence.

CLXXXII. *Undischarged bankrupt obtaining credit.*—Where an undischarged bankrupt obtains credit to the extent of ten pounds or upwards from any person without informing such person that he is an undischarged bankrupt, he shall be guilty of a crime and offence, and may be dealt with and punished as if he had been guilty of a crime and offence under section one hundred and seventy-eight, subsection (B), of this Act, and that section shall apply accordingly.

FRAUDS AND DISABILITIES.

CLXXXIII. *Application of s.* 32 *of Bankruptcy Act*, 1883, *to Scotland.*—In the application of section thirty-two of the Bankruptcy Act, 1883, to Scotland, the following provisions shall have effect:—

(1) The expression "adjudged bankrupt" shall include the case of a person whose estate has been sequestrated by a competent Court in Scotland:

(2) A person adjudged bankrupt shall be disqualified from being elected to or holding or exercising the office of dean of guild, deacon-convener of trades, or member of a town, county, or parish council or school board, or of any local authority under any Act for the time being in force (whether passed before or after the commencement of this Act) relating to local government in Scotland:

(3) The disqualifications to which a person adjudged bankrupt is subject under the said section as amended by this Act shall be removed and cease if and when—

(*a*) The sequestration of his estate is recalled or reduced; or

(*b*) He obtains his discharge from a competent Court.

CLXXXIV. *Application of ss.* 33 *and* 34 *of said Act to Scotland.*—Sections thirty-three and thirty-four of the Bankruptcy Act, 1883, shall apply to Scotland, subject to the following provisions:—

(1) In each of the said sections the expression "adjudged bankrupt" shall have the meaning assigned to it in the immediately preceding section of this Act:

(2) In the said section thirty-three the expression "order" shall include "deliverance or decree," and the expression "Court" shall include the Court in Scotland pronouncing the deliverance or decree:

(3) The said section thirty-four shall be deemed to apply to any person whilst holding the office of dean of guild, deacon-convener of trades, or member of a town, county, or parish council or school board, or of any local authority under any Act for the time being in force (whether passed before or after the commencement of this Act) relating to local government in Scotland.

VOLUNTARY TRUST DEEDS FOR BEHOOF OF CREDITORS.

CLXXXV. *Audit of trustee's accounts.*—In the case of every voluntary trust deed granted after the commencement of this Act by an insolvent for behoof of his creditors generally, where there is no provision made *in gremio* of the trust deed for the audit of the trustee's accounts, and the fixing of his remuneration by a committee of the creditors, or where such committee is not appointed or does not act, the trustee, before making a final division of the estate among the creditors, shall submit his accounts to the accountant, who shall audit the same and fix the amount of the trustee's remuneration; and the accountant may, and is hereby authorised to make such regulations as he may deem expedient for giving effect to the requirements of this section. Any trustee who shall fail to observe the provisions of this section, or of the regulations, if any, made by the accountant, shall forfeit all claim to commission or other remuneration in respect of his acting as trustee.

MISCELLANEOUS PROVISIONS.

CLXXXVI. *Punishment of wilful falsehood.*—If any person shall be guilty of wilful falsehood in any oath made in pursuance of this Act, he shall be liable to a prosecution, either at the instance of the Lord Advocate, or at the instance of the trustee, with the concurrence of the Lord Advocate; provided that, in the latter case, the prosecution shall be authorised by a majority of the creditors present at a meeting to be called for the purpose; and such person shall, on conviction, besides the awarded punishment, forfeit to the trustee, for behoof of the creditors, his whole right, claim, and interest in or upon the sequestrated estate, and the same shall be distributed, either under the sequestration, or, if it be closed, under a process of multiplepoinding, as is hereinbefore provided.

CLXXXVII. *Trustee may be authorised to receive and open post letters.*—The Lord Ordinary or Sheriff, on cause shown, may order that for a period not exceeding three months from the date of the order all letters addressed to the bankrupt shall be delivered by the Postmaster-General, or the officers acting under him, to the sheriff-clerk or trustee, to be opened in presence of the Sheriff, after written notice to the bankrupt to attend, if within Scotland; and, in case the letters shall relate in whole or in part to the estate, they shall be placed in such custody as the Sheriff may direct; and the Lord Ordinary or Sheriff may, on cause shown, renew such order for a like period, as often as shall be necessary.

CLXXXVIII. *Gazette keeper to furnish copies of Gazette.*—The keeper of the *Gazette* shall, on each day of publication, furnish a copy thereof to the keeper of edictal citations and to the Bill Chamber clerks, and to the accountant, who shall keep the same regularly filed, and make the said *Gazettes* on all occasions patent to the lieges at office hours.

CLXXXIX. *Conveyances, deeds, etc., relating to estates of bankrupts, not liable to stamp or other duties.*—All conveyances, assignations,

instruments, discharges, writings, or deeds relating solely to the estate belonging to any bankrupt against whom sequestration has been or may be awarded, either under this or any former Act, and which estate, after the execution of such conveyances, assignations, instruments, discharges, writings, or deeds, shall be and remain the property of such bankrupt, for the benefit of his creditors, or the trustees appointed or chosen under or by virtue of such sequestration, and all discharges to such bankrupt, and all deeds, assignations, instruments, or writings for reinvesting such bankrupt in the estate, and all powers of attorney, commissions, factories, oaths, affidavits, articles of roup or sale, submissions, decrees arbitral, and all other instruments and writings whatsoever, relating solely to the estate of such bankrupt, and all other deeds or writings forming a part of the proceedings ordered under such sequestration, shall be exempt from all stamp duties or other Government duty.

CXC. *Power to Court of Session, by Act of Sederunt, to apportion duties and regulate procedure in relation to this Act.* — It shall be lawful for the judges of the Court of Session, either during session or vacation, by an Act or Acts of Sederunt, from time to time to apportion the duties to be performed by the officers in the Bill Chamber, or in the said Court, or in the Sheriff Courts, and to regulate procedure in relation to this Act, in so far as consistent therewith, and to make regulations with regard to the finding of caution by trustees, and to alter, amend, or add to the provisions of this Act regulating procedure in summary sequestrations and the forms contained in the schedules hereto, and to establish a table of fees to be allowed to agents, both in the Court of Session and Sheriff Courts, for conducting the proceedings, and to prescribe, with the sanction of the Treasury, a scale of fees and percentages to be paid to the accountant for and in respect of proceedings under this Act, and to amend or alter such Act or Acts from time to time.

CXCI. *Repeal.*—(1) The Acts mentioned in the Schedule I. to this Act are hereby repealed to the extent and effect shown in the third column of that schedule.

(2) Notwithstanding the provisions of this section, every process of *cessio bonorum* initiated before the commencement of this Act shall proceed in the same manner and with the same incidents as if this Act had not passed, and for the purpose of every such process the Act or Acts under which the process was initiated shall be deemed to remain in full force.

CXCII. *Commencement.* — This Act shall come into operation on the first day of January nineteen hundred and fourteen, and all proceedings subsequent to that date in every sequestration initiated prior thereto, shall, subject to the provisions of section one hundred and seventy-seven of this Act, be regulated by the provisions of this Act: Provided that this Act shall not operate—

(1) So as to transfer to or vest in the trustee in any sequestration so initiated any property, right, title, or interest of the debtor which has not already been so transferred or vested, and would not have been so transferred or vested if this Act had not passed; or

(2) So as to oblige or compel the bankrupt in any sequestration so initiated to grant any deed for the recovery or disposal of his estate, which he could not have been obliged or compelled to grant if this Act had not passed.

SCHEDULE A (ss. 44, 101).

No. 1.

Abbreviate for the Registers of Inhibitions and Adjudications.

Petition for sequestration of A. B. [name and designation]. Date of first deliverance day of .

(Signed) C. D. [if an agent, state so.]
Date .

No. 2.

Certificate by the Keeper.

This abbreviate was presented by [or received by post from] [name and design the presenter or party transmitting by post] and recorded on [date] in the registers of inhibitions and adjudications.

(Signed) E. F., Keeper.

No. 3.

Abbreviate.

Petition for transferring, in terms of the Bankruptcy (Scotland) Act, 1913, from A. B. [name and designation], as heir of C. D. [name and designation], the estates of C. D., date of deliverance day of .

(Signed) G. H. [if an agent, state so.]
Date .

No. 4.

Memorandum.

Renew abbreviate in sequestration of A. B. [name and designation], [insert date of recording of abbreviate], day of .

(Signed) C. D. [if an agent, state so.]
Date .

SCHEDULE B (s. 44).

NOTICE TO THE GAZETTES.

The estates of A. B. [name and designation] were sequestrated on [date, month, and year] by the [Court of Session or Sheriff of].

The first deliverance is dated the [date].

The meeting to elect the trustee and commissioners is to be held at [hour] o'clock on [day of the week] the [date, month, and year], within [specify particular place] in [town]. A composition may be offered at this meeting, and to entitle creditors to the first dividend their oaths and grounds of debt must be lodged on or before the [insert date].

All future advertisements relating to this sequestration will be published in the *Edinburgh Gazette* alone.

(Signed) P. Q., agent
[specify place of business].

SCHEDULE C (s. 69).

FORM OF BOND OF CAUTION FOR TRUSTEE.

I, A. B. [name and designation], having been appointed trustee on the sequestrated estate of C. D. [name and designation], and I, E. F. [designation], as cautioner, surety, and full debtor for and with the said A. B., hereby bind and oblige ourselves, conjunctly and severally, our heirs and executors, that I the said A. B. shall faithfully discharge all the duties which by law attach to the said office of trustee, and fully account for my whole intromissions with the said estate, and make payment of any balance due by me to the creditors on the said estate, or trustee elected by them to succeed me; declaring that this bond shall not be in any way affected, nor shall I the said E. F. be liberated, by any omission, negligence, or want of diligence on the part of the creditors or commissioners on the said estate. [In case the caution has been limited by the creditors, the following clause will be here inserted: And declaring further, that this bond, so far as concerns me the said E. F. shall not bind me or my foresaids to a greater extent than the sum of [here insert sum in writing], to which my obligation before written is hereby limited.] In witness whereof this bond (so far as not printed), written and filled up by [here shall be inserted in writing a testing clause in legal form].

(Signed) A. B.
E. F.

O. T., witness.
L. F., witness.

SCHEDULE D (s. 70).

ACT AND WARRANT ON CONFIRMATION OF THE TRUSTEE.

[Place and date.]

The Sheriff of the county of [insert county] has confirmed and hereby confirms A. B. [name and designation] trustee on the sequestrated estate of C. D. [name and designation]; and the whole of the estates and effects, heritable and moveable, and real and personal, wherever situated, of the said C. D., are transferred and belong to A. B. as trustee for behoof of the creditors of the said C. D., in terms of the Bankruptcy (Scotland) Act, 1913; and the said A. B. has, as trustee aforesaid, in terms of the said Act, full right and power to sue for and recover all estates, effects, debts and money belonging or due to the said C. D.

(Signed) C. D., sheriff-clerk.

SCHEDULE E (ss. 75, 101, 145).

No. 1.

Abbreviates for the Registers of Inhibitions and Adjudications.

The whole estates and effects, heritable and moveable, and real and personal, wherever situated, of A. B. [name and designation], are transferred and belong to E. F. [name and designation], as trustee on his sequestrated estate, conform to act and warrant of confirmation dated the day of , issued in terms of the Bankruptcy (Scotland) Act, 1913.

[Signed by the trustee or his agent.]

No. 2.

Certificate by the Keeper.

This abbreviate was presented by [name and designation] and recorded on [date] in the registers of inhibitions and adjudications.

(Signed) E. F., keeper.

No. 3.

Abbreviate of Adjudication.

The estates vested in A. B. [name and designation] as heir of C. D. [name and designation] are transferred and belong to E. F. [name and designation] as trustee on the sequestrated estate of the said C. D., conform to deliverance by the Lord Ordinary [or the Sheriff], dated the day of , and in terms of the Bankruptcy (Scotland) Act, 1913.

[Signed by the trustee or his agent.]

No. 4.

Abbreviate of Deliverance of Discharge.

A. B. [name and designation] has been discharged of all debts and obligations contracted or for which he was liable at the date of the sequestration of his estates [if upon composition add as follows:—"the said sequestration declared at an end and the said A. B. reinvested in his estates on composition of [insert amount]"], conform to deliverance by the Lord Ordinary [or the Sheriff] dated the day of , and in terms of the Bankruptcy (Scotland) Act, 1913.

[Signed by the Bill Chamber clerk or sheriff-clerk.]

[Date.]

No. 5.

Abbreviate Extract of Deliverance Recalling a Sequestration or Declaring a Sequestration at an End.

The sequestration of the estates of A. B. [name and designation], the first deliverance in which is dated [insert date], has been recalled [or declared at an end], conform to deliverance by the Lord Ordinary [or as the case may be] dated [insert date], in terms of the Bankruptcy (Scotland) Act, 1913.

Extracted day of .

D. E., clerk of bills [or sheriff-clerk].

SCHEDULE F (s. 83).

FOR THE GAZETTE.

Sequestration of C. D. [designation].

A. B. [name and designation] has been elected trustee on the estate, and E. F. and G. [names and designations] have been elected commissioners. The examination of the bankrupt will take place in the Sheriff Court-house [or other place] on [day of week] the [date] of [month] next, at [hour]. The creditors will meet in [specify the place, day, date, month, and hour] o'clock. [If any offer of composition has been entertained at the meeting for election of trustee, intimate this as provided by the Act.]

[Signed by the trustee.]

[Date.]

SCHEDULE G (s. 156).

REGISTER OF SEQUESTRATIONS.

Date of Trustee's Discharge.	
Bankrupt's Discharge on or without Composition.	
Date of Bankrupt's Discharge.	
Commissioners' Names and Designations.	
Trustee's Name and Designation.	
Time and Place for electing Trustee.	
Date of awarding. (If recalled, Entry to be in this Column.)	
Date of first Deliverance.	
To what Sheriff remitted.	
Division of the Court, if by Court of Session.	
Whether Sequestration awarded by Sheriff (state the County) or by Court of Session.	
Name and Designation of Petitioning or Concurring Creditor.	
Place and County of Bankrupt's Residence or Business.	
Name and Designation of Bankrupt.	

SCHEDULE H (s. 157).

ANNUAL RETURN BY EACH TRUSTEE WITHIN FOURTEEN DAYS AFTER THE THIRTY-FIRST DAY OF DECEMBER, AND BY EACH SHERIFF-CLERK WITHIN FOURTEEN DAYS THEREAFTER.

Name and Designation of Bankrupt.	
County and Place.	
By whom Sequestration awarded.	
Name and Designation of Trustee.	
Names and Designations of Commissioners.	
Amount of Funds as in the Bankrupt's State.	
Amount of Funds realised.	
Amount of Debts.	
Allowance to Bankrupt.	
Discharge on Composition or without Composition.	
Amount of Composition, and when payable, and Names and Designations of Cautioners.	
Dividend—Amount paid or unpaid.	
Amount of Expenses. Trustee's Commission.	
Amount of Expenses. Law Expenses.	
Amount of Expenses. Miscellaneous.	

Signed by trustee and by sheriff-clerk.

SCHEDULE I (s. 191).

Year and Chapter.	Short Title.	Extent of Repeal.
6 & 7 Will. IV. c. 56.	The Cessio (Scotland) Act, 1836	The whole Act.
19 & 20 Vict. c. 79.	The Bankruptcy (Scotland) Act, 1856 . . .	The whole Act.
20 & 21 Vict. c. 19.	The Bankruptcy and Real Securities (Scotland) Act, 1857.	The whole Act.
23 & 24 Vict. c. 33.	The Bankruptcy (Scotland) Amendment Act, 1860.	The whole Act
38 & 39 Vict. c. 26.	The Bankruptcy (Scotland) Act, 1875 . . .	The whole Act.
39 & 40 Vict. c. 70.	The Sheriff Courts (Scotland) Act, 1876 . . .	Section 26.
42 & 43 Vict. c. 40.	The Conveyancing (Scotland) Act, 1874, Amendment Act, 1879.	The whole Act
43 & 44 Vict. c. 34.	The Debtors (Scotland) Act, 1880	The whole Act except section 4.
44 & 45 Vict. c. 22.	The Bankruptcy and Cessio (Scotland) Act, 1881 .	The whole Act.
47 & 48 Vict. c. 16.	The Bankruptcy, Frauds and Disabilities (Scotland) Act, 1884.	The whole Act.
50 & 51 Vict. c. 69.	The Conveyancing (Scotland) Acts, 1874 and 1879, Amendment Act, 1887.	Section 2.
52 & 53 Vict. c. 39.	The Judicial Factors (Scotland) Act, 1889 . .	Section 17.
58 & 59 Vict. c. 19.	The Court of Session Consignations (Scotland) Act, 1895.	Sections 10 and 11. Section 16, so far as relating to any sums received by the accountant or deposited in bank in terms of this Act.

ACT 1621, c. 18.

A Ratification of the Act of the Lords of Council and Session made in Julie 1620, against unlawful Dispositions and Alienations, made by Dyvours and Banck-rupts.

Our Soveraigne Lord, with advice and consent of the Estates, conveened in this present Parliament, ratifies, approves, and for his Highnesse, and his successours, perpetually confirmes the Act of the Lords of Council and Session, made against dyvours and banck-rupts, at Edinburgh, the 12. daye of Julie, 1620. and ordaines the same to have, and take full effect, and execution, as a necessarie and profitable law, for the weale of all his Highnesse subjectes: Of the which Act the tennor followeth.

The Lords of Council and Session understanding, by the grievous and just complaints of many of His Majesties good subjects, that the fraude, malice, and falshood of a number of dyvours and bankrupts is become so frequent, and avowed, and hath already taken such progresse, to the overthrow of many honest mens fortunes, and estates: that it is likely to dissolve trust, commerce, and faithful dealing amongst subjects: Whereupon must ensue the ruine of the whole estate, if the godlesse deceites of those be not prevented, and remedied; who by their apparent wealth in lands and goods and by their showe of conscience, credite, and honestie; drawing into their hands upon trust the money, merchandize, and goods, of well-meaning and credulous persons, doe no wayes intend to repay the same: but either to live ryetously by wasting other mens substance: or to enrich themselves, by that subtil stealth of true mens goods, and to withdraw themselves, and their goods foorth of this realme, to elude all execution of justice: And to that effect, and in manifest defraud of their creditours, do make simulate and fraudful alienations, dispositions, and other securities, of their lands, reversions, teyndes goods, actions, debtes and others belonging unto them, to their wives children, kins-men, alleyes, and other confident and interposed persons; without any true, lawful, or necessarie cause: and without any just or true price interveening in their saids bargaines: Whereby their just creditours, and cautioners, are falsly and godlesly defrauded of all payment of their just debts; and many honest families likely to come to utter ruin.

For remeed whereof, the said Lordes, according to the powers given unto them by His Majestie and his most noble progenitors, to set downe orders for administration of justice: meaning to follow and practise the good and commendable lawes civil and canon, made against fraudful alienations, in prejudice of creditors, and against the authors and partakers of such fraude; statutes, ordaines, and declares, That in all actions, and causes depending, or to be intended by any true creditor, for recoverie of his just debt, or satisfaction of his lawful action and right: They will decreete and decerne, all alienations, dispositions, assignations, and translations whatsoever, made by the debtor, of any of his lands, teindes, reversions, actions, debtes, or goods whatsoever, to any conjunct or confident person, without true, just, and necessarie causes, and without a just price really payed, the same beeing done after the contracting of lawful debts from true creditors: To have beene from the beginning, and to be in all times comming, null, and of none availe, force, nor effect: at the instance of the true and just creditor, by way of action, exception, or reply: without further declarator. And in case any of His Majesties good subjectes (no wayes partakers of the saids fraudes) have lawfully purchased any of the saids bankrupts landes or goods. by true bargaines, for just and competent pryces, or in satisfaction of their lawful debts, from the interposed persons, trusted by the said dyvours. In that case, the right

lawfully acquired by him who is no-wayes partaker of the fraude, shall not be annulled in manner foresaid. But the receiver of the pryce of the saids lands, goods and others, from the buyer, shall be holden and oblished to make the same forth-comming to the behoove of the bankruptes trew creditors, in payment of their lawful debts. And it shall be sufficient probation of the fraud intended against the creditors, if they, or any of them, shall be able to verifie by writte, or by oath, of the partie receiver of any securitie from the dyvour or bankrupt, that the same was made without any true, just, and necessarie cause, or without any true and competent price: Or that the landes and goods of the dyvour and bankrupt beeing sold by him who bought them from the said dyvour, the whole, or the most part of the price thereof was converted, or to be converted to the bankruptes profite and use. Providing alwayes, that so much of the saids landes and goods, or prices thereof so trusted by bankrupts to interposed persons, as hath beene really payed, or assigned by them to any of the bankrupts lawful creditors, shall be allowed unto them, they making the rest forth-comming to the remanent creditors, who want their due payments. And if in time comming any of the saids dyvours, or their interposed partakers of their fraude, shall make any voluntarie payment or right to any person, in defraude of the lawful, and more timely diligence of another creditor, having served inhibition, or used horning, arreastment, comprizing, or other lawful meane, duely to affect the dyvours lands, or goods, or price thereof to his behoove. In that case the said dyvour, or interposed person, shall be holden to make the same forth-comming to the creditor, having used his first lawful diligence: who shall likewise bee preferred to the concreditor, who beeing posterior unto him in diligence, hath obtained payment by the partial favour of the debtor, or of his interposed confident: and shall have good action to recover from the said creditor that which was voluntarily payed in defraude of the persuers diligence.

Finally, the Lordes declares all such bankrupts and dyvours, and all interposed persons, for covering or executing their frauds, and all others, who shall give counsel, and wilful assistance unto the saids bankrupts, in the devising and practising of their saids fraudes and godlesse deceits, to the prejudice of their true creditors, shall be reputed and holden dishonest, false and infamous persons, incapable of all honours, dignities, benefices, and offices: Or to passe upon inqueistes, or assyses: Or to beare witness in judgement or outwith in any times coming.

ACT 1696, c. 5.

Act for declaring Nottour Bankrupt.

Our Soveraign Lord considering that notwithstanding of the Acts of Parliament already made against fraudfull alienations by bankrupts in prejudice of their creditors yet their frauds and abuses are still very frequent Does therefor and for the better restraining and obviating thereof in time comeing with advice and consent of the Estates of Parliament statute and declare That for hereafter if any debitor under diligence by horning and caption at the instance of his creditor be either imprisoned or retire to the Abbay or any other privileged place or flee or abscond for his personall security or defend his person by force and be afterwards found by sentence of the Lords of Session to be insolvent shall be holden and repute on these three joint grounds viz. diligence by horning and caption and insolvencie joyned with one or other of the said alternatives of imprisonment or retireing or fleeing or absconding or forcible defending to be a nottour bankrupt and that from the time of his forsaid imprisonment retireing fleeing absconding or forcible defending Which being found by sentence of the Lords of Session at the instance of any of his just creditors who are hereby empowered to raise and prosecute a declarator of bankrupt thereanent His Majestie with consent of the Estates of Parliament Declares all and whatsomever voluntar dispositions assignations or other deeds which shall be found to be made or granted directly or indirectly to the forsaid dyvor or bankrupt either at or after his becomeing bankrupt or in the space of sixty dayes of befor in favors of any of his creditors either for their satisfaction or farther security in preference to other creditors to be voyd and null : Likeas it is declared that all dispositions heretable bonds or other heretable rights whereupon infeftment may follow granted by the forsaid bankrupts shall only be reckoned as to this case of bankrupt to be of the date of the sasine lawfully taken thereon but prejudice to the validity of the said heretable rights as to all other effects as formerly And because infeftments for relief not only of debts already contracted but of debts to be contracted for thereafter are often found to be the occasion or covert of frauds It is therefor farder declared That any disposition or other rights that shall be granted for hereafter for relieff or security of debts to be contracted for the future shall be of no force as to any such debts as shall be found to be contracted after the sasine or infeftment following on the said disposition or right but prejudice to the validity of the said disposition and right as to other points as accords And lastly His Majestie and the Estates of Parliament do hereby statute and ordain That if any person shall for hereafter defraud his creditors and be found by sentence of the Lords to be a fradulent bankrupt the degree of his fraud shall also be determined by the same sentence and the person guilty not only held to be infamous, Infamia Juris but also be by them punished by banishment or otherwayes (death excepted) as they shall see cause And the Lords of Session are hereby discharged to dispense any bankrupt as to the habit unless in the summonds and proces of cessio the bankrupts failing through misfortune be lybelled sustained and proven And this but prejudice of all former Acts anent bankrupts which are still to stand in their full force.

EXCERPTS FROM THE BANKRUPTCY (ENGLAND) ACT, 1883.

(46 & 47 Vict. c. 52.)

PART II.

Disqualifications of Bankrupt.

32. *Disqualifications of bankrupt.*—(1.) Where a debtor is adjudged bankrupt he shall, subject to the provisions of this Act, be disqualified for—

(*a.*) Sitting or voting in the House of Lords, or on any committee thereof, or being elected as a peer of Scotland or Ireland to sit and vote in the House of Lords;

(*b.*) Being elected to, or sitting or voting in, the House of Commons, or on any committee thereof;

(*c.*) Being appointed or acting as a justice of the peace;

(*d.*) Being elected to or holding or exercising the office of mayor, alderman, or councillor;

(*e.*) Being elected to or holding or exercising the office of guardian of the poor, overseer of the poor, member of a sanitary authority, or member of a school board, highway board, burial board, or select vestry.

(2.) The disqualifications to which a bankrupt is subject under this section shall be removed and cease if and when,—

(*a.*) the adjudication of bankruptcy against him is annulled; or

(*b.*) he obtains from the Court his discharge with a certificate to the effect that his bankruptcy was caused by misfortune without any misconduct on his part.

The Court may grant or withhold such certificate as it thinks fit, but any refusal of such certificate shall be subject to appeal.

(3.) The disqualifications imposed by this section shall extend to all parts of the United Kingdom [*see* 53 *&* 54 *Vict. c.* 71, *s.* 9].

Orders and Warrants of Court.

117. *Enforcement of orders of courts throughout the United Kingdom.*—Any order made by a court having jurisdiction in bankruptcy in England under this Act shall be enforced in Scotland and Ireland in the courts having jurisdiction in bankruptcy in those parts of the United Kingdom respectively, in the same manner in all respects as if the order had been made by the Court hereby required to enforce it; and in like manner any order made by a court having jurisdiction in bankruptcy in Scotland shall be enforced in England and Ireland, and any order made by a court having jurisdiction in bankruptcy in Ireland shall be enforced in England and Scotland by the courts respectively having jurisdiction in bankruptcy in the part of the United Kingdom where the orders may be required to be enforced, and in the same manner in all respects as if the order had been made by the Court required to enforce it in a case of bankruptcy within its own jurisdiction.

118. *Courts to be auxiliary to each other.*—The High Court, the county courts, the courts having jurisdiction in bankruptcy in Scotland and Ireland, and every British court elsewhere having jurisdiction in bankruptcy or insolvency, and the officers of those courts respectively, shall severally act in aid of and be auxiliary to each other in all matters of bankruptcy, and an order of the court seeking aid, with a request to another of the said courts, shall be deemed sufficient to enable the latter court to exercise, in regard to the matters directed by the order, such jurisdiction as either the court which made the request, or the court to which the request is made, could exercise in regard to similar matters within their respective jurisdictions.

119. *Warrants of Bankruptcy Courts.*—(1.) Any warrant of a court having jurisdiction in bankruptcy in England may be enforced in Scotland, Ireland, the Isle of Man, the Channel Islands, and elsewhere in Her Majesty's dominions, in the same manner and subject to the same privileges in and subject to which a warrant issued by any justice of the peace against a person for an indictable offence against the laws of England may be executed in those parts of Her Majesty's dominions respectively in pursuance of the Acts of Parliament in that behalf.

ORDERS AND WARRANTS OF COURT.

121. *Enforcement of orders of courts throughout the United Kingdom.*—Any order made by a court having jurisdiction in bankruptcy in England under this Act or any enactment repealed by this Act shall be enforced in Scotland and Ireland in the courts having jurisdiction in bankruptcy in those parts of the United Kingdom respectively, in the same manner in all respects as if the order had been made by the Court hereby required to enforce it; and in like manner any order made by a court having jurisdiction in bankruptcy in Scotland shall be enforced in England and Ireland, and any order made by a court having jurisdiction in bankruptcy in Ireland shall be enforced in England and Scotland by the courts respectively having jurisdiction in bankruptcy in the part of the United Kingdom where the orders may require to be enforced, and in the same manner in all respects as if the order had been made by the Court required to enforce it in a case of bankruptcy within its own jurisdiction.

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(2) A search warrant issued by a court having jurisdiction in bankruptcy for the discovery of any property of a debtor may be executed in manner prescribed or in the same manner and subject to the same privileges in and subject to which a search warrant for property supposed to be stolen may be executed according to law.

124. *Commitment to prison.*—Where the Court commits any person to prison, the commitment may be to such convenient prison as the Court thinks expedient, and if the gaoler of any prison refuses to receive any prisoner so committed he shall be liable for every such refusal to a fine not exceeding one hundred pounds.

Note.—See C.A.S., E, iv. 1, *infra*, page 54.

ACT OF PARLIAMENT

TO

Abolish Imprisonment for Debt, and to provide for the better Punishment of Fraudulent Debtors in Scotland, and for other purposes.—[43 *and* 44 *Vict., cap.* 34.—*7th September* 1880.]

Abolition of Imprisonment for Debt.

1V. *Abolition of imprisonment for debt, with certain exceptions.*—With the exceptions hereinafter mentioned, no person shall, after the commencement of this Act, be apprehended or imprisoned on account of any civil debt.

There shall be excepted from the operation of the above enactment—

1. Taxes, fines, or penalties due to Her Majesty, and rates and assessments lawfully imposed or to be imposed:

2. Sums decerned for aliment:

Provided that no person shall be imprisoned in any case excepted from the operation of this section for a longer period than twelve months.

Nothing contained in this Act shall affect or prevent the apprehension or imprisonment of any person under a warrant, granted against him as being *in meditatione fugæ*, or under any decree or obligation *ad factum præstandum*.

ACT OF PARLIAMENT

TO

Amend the Law relating to Civil Imprisonment in Scotland.—[45 *and* 46 *Vict.*, *cap.* 42.—18*th August* 1882.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I. *Short title.*—This Act may be cited for all purposes as the Civil Imprisonment (Scotland) Act, 1882.

Repealed 1898.

II. *Commencement of Act.*—This Act shall come into operation on the first day of October one thousand eight hundred and eighty-two, which date is herein-after referred to as the commencement of this Act.

III. *Imprisonment for alimentary debts.*—From and after the commencement of this Act no person shall, except as herein-after provided, be apprehended or imprisoned on account of his failure to pay any sum or sums decerned for aliment.[1]

IV. *Power to imprison for wilful failure to obey decree for alimentary debt.*—Subject to the provisions herein-after contained, any sheriff or sheriff substitute may commit to prison for a period not exceeding six weeks, or until payment of the sum or sums of aliment, and expenses of process decerned for, or such instalment or instalments thereof as the sheriff or sheriff substitute may appoint, or until the creditor is otherwise satisfied, any person who wilfully fails to pay within the days of charge any sum or sums of aliment, together with the expenses of process, for which decree has been pronounced against him by any competent court; provided—

(1.) That the warrant to commit to prison may be applied for by the creditor in the sum or sums decerned for without any concurrence:

(2.) That the application shall be disposed of summarily, and without any written pleadings:

(3.) That the failure to pay shall be presumed to have been wilful until the contrary is proved by the debtor; but that a warrant of imprisonment shall not be granted if it is proved to the satisfaction of the sheriff or sheriff substitute that the debtor has not, since the commencement of the action in which the decree was pronounced, possessed or been able to earn the means of paying the sum or sums in respect of which he has made default, or such instalment or instalments thereof as the sheriff or sheriff substitute shall consider reasonable:

(4.) That a warrant of imprisonment may be granted of new, subject to the same provisions and conditions, at intervals of not less than six months, against the same person in respect of failure to pay the same sum or sums of aliment and expenses of process, if or in so far as still remaining due, or such instalment or instalments thereof as the sheriff or sheriff substitute shall consider reasonable, or any sums afterwards accruing due under the decree, or such instalment or instalments thereof as the sheriff or sheriff substitute shall consider reasonable:

(5.) That the imprisonment shall not to any extent operate as a satisfaction or extinction of the debt, or interfere with the creditor's other rights and remedies for its recovery.

(6.) That the creditor, upon whose application the warrant of imprisonment is granted, shall not be liable to aliment or to contribute to the aliment of the debtor while incarcerated under such warrant; but that the incarcerated debtor shall be subject to the enactments and rules as to maintenance, work, discipline, and otherwise applicable to the class of prisoners committed for contempt of court.

V. *Imprisonment for rates and assessments.*—No person shall, on account of failure to pay rates and assessments, be imprisoned for a longer period than six weeks in all at the instance of

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[1] By the Debtors (Scotland) Act, 1880 (*supra*, p. 43), imprisonment was abolished for all civil debts, with the exception of (1) taxes, fines, or penalties due to Her Majesty, and rates and assessments lawfully imposed or to be imposed; (2) sums decerned for aliment. The second of these exceptions is dealt with and modified by sections 3 and 4 of this Act. The first, so far as regards "rates and assessments," is dealt with in section 5, which limits the period of imprisonment. The exception of "taxes, fines, or penalties due to Her Majesty" still remains

the rating authority or authorities of any one parish, combination, district, county, or burgh, in respect of his failure to pay the rates and assessments due for any one year, without prejudice to any other civil rights and remedies competent to the rating authority.

VI. *Imprisonment in law burrows, &c.*—In order to amend the law in regard to imprisonment in the process of law burrows, the following provisions shall have effect; (that is to say,)

(1.) It shall not be competent to issue letters of law burrows under the signet in the Court of Session or Court of Justiciary:

(2.) Upon an application for law burrows being presented, the sheriff or sheriff substitute or justice of the peace shall immediately, and without taking the oath of the applicant, order the petition to be served upon the person complained against, and shall at the same time grant warrant to both parties to cite witnesses.

(3.) At the diet of proof appointed, or at any adjourned diet, the application shall be disposed of summarily under the provisions of the Summary Jurisdiction Acts, and without any written pleadings or record of the evidence being kept, and expenses may be awarded against either party if and as it shall seem just:

(4.) In every application for law burrows the parties shall be competent witnesses, and the sheriff or sheriff substitute, or justice of the peace, may grant the prayer of the petition upon the sworn testimony of one credible witness, although such witness may be a party.

(5.) In the event of the sheriff or sheriff substitute, or justice of the peace, ordering caution to be found, the amount of caution shall be in his discretion:

(6.) The sheriff or sheriff substitute, or justice of the peace, may, in the event of his ordering caution to be found, further order that the party complained against shall, failing his finding caution, be imprisoned for a period not exceeding six months, if the order be made by a sheriff or sheriff substitute, and not exceeding fourteen days, if the order be made by a justice of the peace:

(7.) It shall be in the power of the sheriff or sheriff substitute, or justice of the peace, to order the party complained against to grant his own bond without caution for duly implementing the terms of the order, and failing such bond being granted within the time limited by the order, such order may farther direct that the party failing shall be imprisoned for such periods as aforesaid:

(8.) The applicant shall not be bound to aliment or contribute to the aliment of the person complained against when incarcerated; but the person so incarcerated shall be subject to the enactments and rules as to maintenance, work, discipline, and otherwise applicable to the class of prisoners committed for contempt of court:

Provided always, that except in so far as expressly altered by this section, nothing in this Act shall affect the existing law and practice in regard to the process of law burrows.

VII. *Discharge of persons in custody at the commencement of this Act.*—Where any person is at the commencement of this Act in custody under a warrant of imprisonment or other process in any case in which he would not be liable to be apprehended or imprisoned or detained in custody after the commencement of this Act, such person shall, within twelve hours after the commencement of this Act, be discharged from such custody; but his apprehension, imprisonment, or discharge shall not affect the other rights or remedies of any creditor or other person in respect of any debt, claim, or demand against him. Repealed 1896.

VIII. *Amendment of law as to aliment of civil prisoners.*—With respect to the alimenting of civil prisoners entitled to aliment, the following provision shall have effect; (that is to say,)

The gaoler or other person in whose hands the sum of ten shillings shall have been deposited, in terms of the Act sixth George the Fourth, chapter sixty-two, as a means of and security for the aliment of any civil prisoner, shall, as from the date of his imprisonment, pay out of the same the aliment of the said prisoner at the rate of not exceeding one shilling per diem: Provided that, if such prisoner shall not apply for or shall not be found entitled to aliment, any sum expended under this sub-section shall be a debt due by him to the incarcerating creditor.

IX. *Construction of Act.*—This Act shall be read and construed together with the Debtors (Scotland) Act, 1880 [43 and 44 Vict., c. 34], and the Bankruptcy and Cessio (Scotland) Act, 1881 [44 and 45 Vict., c. 22].

ACT OF PARLIAMENT

TO

Amend and extend the Law relating to Judicial Factors and others in Scotland, and to unite the Offices of the Accountant of the Court of Session and the Accountant in Bankruptcy in Scotland.—[52 *and* 53 *Vict., cap.* 39.—12*th August* 1889.]

Whereas it is expedient to amend the Act 12 and 13 Victoria, chapter 51, intituled "An Act of Parliament for the better protection of the property of pupils, absent persons, and persons under mental incapacity in Scotland," herein-after called the Pupils Protection Act, 1849, and the Judicial Factors (Scotland) Act, 1880, and to put all judicial factors under the supervision of the accountant of court in Scotland: And whereas it is expedient to unite the offices of accountant of the Court of Session in Scotland and accountant in bankruptcy in Scotland: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I. *Appointment of accountant.*—19 *and* 20 *Vict. c.* 79.—From and after the commencement of this Act, section 9 of the Pupils Protection Act, 1849, and section 156 of the Bankruptcy (Scotland) Act, 1856, shall be and are hereby repealed, and in lieu thereof it shall be lawful for Her Majesty and Her heirs and successors, to appoint a person versant in law and accounts, to be called the accountant of court (herein-after referred to as the accountant), with such yearly salary as may from time to time be fixed by the Commissioners of Her Majesty's Treasury, payable out of any moneys to be voted by Parliament for that purpose, and the accountant shall, subject to the approval of the Secretary for Scotland, appoint such number of clerks as may from time to time be necessary, and with such salaries as may be fixed by the Treasury, which salaries shall be paid out of any moneys to be voted by Parliament for that purpose.

No person, other than the accountant, herein-after appointed under the provisions of this section shall be entitled to superannuation unless he has been admitted to his office with a certificate from the Civil Service Commissioners: Provided that it shall be lawful for the Treasury, if and so far as they shall see fit, to grant superannuation to persons serving in the office of the accountant of the Court of Session or the accountant in bankruptcy at the passing of this Act, in all respects as if they had been admitted to their offices with such certificates.

II. *Accountant to hold no other office.*—The accountant to be appointed under this Act, and his successors in office, shall hold no other office, and shall not directly or indirectly, by himself or any partner, be engaged in or transact any business for profit other than the business devolving upon him as accountant of court.

III. *Union of existing clerical staffs.*—The existing clerical staffs of the offices of accountant of the Court of Session and accountant in bankruptcy shall be so united that each member thereof shall be liable to perform any duties which may be assigned to him by the accountant.

IV. *Compensation to accountant of Court of Session by the Treasury as they shall think proper.*—It shall be lawful for the Treasury to grant out of moneys to be provided by Parliament to the holder of the office of accountant of the Court of Session at the date of the passing of this Act such compensation on the abolition of his office as they shall think proper, having reference to the tenure of his office, length of service, and all other circumstances of his case.

V. *Pupils Protection and Bankruptcy Acts to apply to accountant.*—The provisions of the Pupils Protection Act, and of the Bankruptcy Acts and Cessio Acts, relating to the accountant of the Court of Session and accountant in bankruptcy respectively, shall, so far as not altered by this Act, apply to the accountant to be appointed in terms of this Act and his successors in office.

VI. *All judicial factors to be under supervision of accountant.*—In addition to the factors specified in the recited Act of 1849, the accountant shall superintend the conduct of all other factors and persons already appointed or to be appointed by the Court of Session or any of the Lords Ordinary in the said court, or

by any of the sheriffs or sheriff-substitutes in the several sheriff courts in Scotland, to hold, administer, or protect any property or funds belonging to persons or estates in Scotland; and all such factors and others, subject to such rules as may from time to time be made by Acts of sederunt as herein-after provided, shall be and hereby are made subject to the provisions affecting judicial factors of the said recited Act of 1849, and of any Acts amending the same, or in terms of the Judicial Factors (Scotland) Act, 1880, and of any Acts of sederunt made in terms of said Acts, and the accountant shall see that they duly observe all rules and regulations affecting them for the time: Provided that nothing in this section contained shall be held to apply to executors dative or to trustees appointed by the Court under the Trusts (Scotland) Acts, the Entail (Scotland) Act, 1882, or in virtue of any other power; but nothing in this section contained shall prevent trustees appointed by the court from availing themselves of the powers contained in section 18 of this Act.

VII. *Penalties for misconduct.*—Any person who in virtue of his office is subject to the provisions of this Act, and who fails to comply therewith, or who misconducts himself or fails in the discharge of his duties, shall be liable to the penalties imposed by section 6 of the Pupils Protection Act, 1849, or to any one or more of them as the court in its discretion shall decide.

VIII. *Return of factors, &c. to be supplied to accountant by clerks of court, &c.*—Immediately after the passing of this Act it shall be incumbent on such one or more of the depute or assistant clerks of session, or of the clerks in the office of the Bill Chamber or other qualified person or persons as shall be selected by the principal clerks of session with the approval of the Lord Advocate, to prepare under the supervision of the said principal clerks a return setting forth the following particulars applicable to all factors and other persons referred to in section 6 hereof, appointed after the 1st day of January 1870, and to all factors and other persons under any factory constituted prior to said last-mentioned date in which proceedings have been taken in court since that date not embraced under the provisions of the Pupils Protection Act, 1849, the Judicial Factors (Scotland) Act, 1880, and the Bankruptcy Acts, and where the factories or other offices held by them still subsist, viz.:—(1) the date of the factor's appointment; (2) his name and designation; (3) the name of the estate on which he is factor; (4) the date of his lodging of the inventory, if lodged; (5) the date of the last petition for the audit of his accounts; (6) the latest date of the accounts so submitted to audit; (7) the date of the interlocutor approving of the accounts; and the said return, with the whole of the factors' inventories, accounts, and reports thereon, so far as lodged in process, shall be transmitted to the accountant on or before the 30th day of June 1890, and it shall also be incumbent on the sheriff clerks to prepare the like returns applicable to all factors and other persons appointed in the sheriff courts, and not embraced under the provisions of the Pupils Protection Act, 1849, the Judicial Factors (Scotland) Act, 1880, and the Bankruptcy Acts.

IX. *Inventories, &c. to be lodged with accountant.*—The accountant shall have power to require every factor and other such persons named in such return, unless evidence to his satisfaction is produced that the factories or other offices held by them have ceased to subsist, to lodge with him, within a period to be specified by him, a copy of the original inventory of the estate, copies of any reports on the audit of his accounts, and his accounts and vouchers if not in process from the latest date to which the same have been judicially approved of to a date to be fixed by the accountant, and the factor and other persons aforesaid shall be bound to comply with such requisition within the time specified, failing which the matter shall be reported by the accountant to the court by which such factor or other person was appointed.

X. *Accountant in certain cases to apply for appointment of successor to factor deceased.*—In the event of its being found that any factor or other person referred to in section 6 hereof has died undischarged or has ceased to discharge the duties of his office without anyone having been appointed in succession to him, unless the purposes of his appointment have, in the opinion of the accountant, been exhausted, it shall be the duty of the accountant, unless the persons interested in such factory or any of them shall make the application on his requisition, to apply to the court for the appointment of a factor in place of such factor or other person, and it shall be the duty of the factor so appointed to investigate the accounts of the former factor or other person aforesaid, and to receive any balance due from his representatives or his cautioner or cautioners.

XI. *Factors* loco tutoris *to pupils to become curators on pupil attaining minority.*—After the passing of this Act it shall not be necessary to apply for the appointment of a *curator bonis* to a minor whose estate has, up to the date of his becoming a minor, been administered by a duly appointed factor *loco tutoris*, and the said factor shall, *ipso facto*, become *curator bonis* to the said minor, and shall continue the administration of the estate until the majority of the said minor, or until he has himself chosen curators in the manner directed by law.

XII. *Audit of accounts.*—In all cases coming for the first time under the supervision of the accountant he shall be required to audit the accounts from their commencement, and if for this purpose it shall appear to him to be necessary, he shall have power to remit such cases or any of them to such duly qualified persons as he may with the approval of the Lord Advocate select to audit, but all such audits shall be supervised by him, and he shall be responsible for the correctness thereof, and such persons shall be paid such remuneration

for their services in such audit as the Lord Advocate with the approval of the Treasury shall determine, out of moneys to be provided by Parliament.

Provided always, that the accountant may, if he thinks fit, on the production of reports of a professional or official auditor in any case, accept such report as sufficient for the period up to the date thereof, and shall not be required to audit the said accounts for that period.

XIII. *As to funds, &c. furth of Scotland.*—An official extract of the appointment of any judicial factor, trustee, tutor, curator, or other person judicially appointed and subject to the provisions of the recited Acts or of this Act, shall have throughout the British dominions as well out of Scotland as in Scotland, the full force and effect of an assignment or transfer, executed in legal and appropriate form, of all funds, property, and effects situated or invested in any part of the British dominions, and belonging to or forming part of the estate under his charge; and all debtors and others holding any such funds, property, or effects, shall be bound, on production of such official extract, to pay over, assign, or transfer the same to such judicial factor, trustee, tutor, curator, or other person.

XIV. *Procedure.*—All applications under this Act or any of the recited Acts shall, except as after mentioned, and notwithstanding any provision in any of the recited Acts to the contrary, be dealt with in the manner directed by sections 4, 5, 6, and 10 of an Act passed in the 20th and 21st year of the reign of Her Majesty, intituled "An Act to regulate the distribution of business in the Court of Session in Scotland:" Provided always, that cases arising under the Bankruptcy Acts shall be dealt with in the manner directed by the said Acts.

XV. *Fees in bankruptcy cases.*—The Court of Session shall, with the sanction of the Treasury, from time to time prescribe a scale of fees and percentages to be paid to the accountant for and in respect of proceedings under the Bankruptcy Acts, and section 18 of this Act, and the accountant shall annually prepare an account shewing the receipts from bankruptcy cases to be laid before the Queen's and Lord Treasurer's Remembrancer, who is hereby required to examine and audit such account, and submit it thereafter to the Lord President of the Court of Session, with a view to the reconsideration by the court of the fees in use to be charged, and such fees shall be regulated, increased, or diminished as the court, with such sanction as aforesaid, shall think proper.

XVI. *Fee-fund to cease and future fees to be paid in stamps.*—The fee-fund established by section 39 of the Pupils Protection Act, 1849, shall cease from the commencement of this Act, and any accumulated balance which may then exist shall be paid into Her Majesty's exchequer, and thereafter all the fees payable in the office of the accountant shall be collected by means of stamps.

XVII. *Commission or fees in bankruptcy to have approval of accountant.*—Every trustee appointed under the Bankruptcy Acts shall intimate by circular to every creditor upon the estates under his charge, and also to the bankrupt, the deliverance of the commissioners fixing a commission or fee to be allowed to such trustee, and every such trustee and also every creditor and the bankrupt, shall be entitled to appeal to the accountant against any such deliverance, and that within ten days of the issue of such circular, by addressing a note to the accountant stating his objections to such deliverance, and the trustee shall thereupon lay the deliverance of the commissioners and the account to which such deliverance applies before the accountant, and such commission or fee shall not be paid to the trustee, or entered in his account, until the accountant has intimated his approval of the commission or other payments sanctioned by the commissioners. In the event of the accountant not concurring with the commissioners, he shall intimate his objections and the grounds thereof to the trustee or bankrupt or creditor appealing, and shall indicate the sum he would suggest, and in the event of the trustee or bankrupt or creditor or the commissioners not acquiescing in this suggestion, the matter shall be reported forthwith by the accountant to the Lord Ordinary officiating on the bills in the Court of Session or to the sheriff, whose decision shall be final; and in the event of such appeal the procedure enacted under sections 127, 130, 131, and 132 of the Bankruptcy (Scotland) Act, 1856, shall, in cases to which such sections apply, be postponed till the decision is given in the appeal; and where the deliverance of the commissioners is altered, the trustee shall give effect to the alteration in his accounts, and the commissioners shall in such cases reconsider and declare, within eight days after the date of the decision, the amount to be divided among the creditors in terms of sections 125, 130, 131, and 132 of the Bankruptcy (Scotland) Act, 1856, after taking such alteration into account, and the trustee shall within four days thereafter, and in cases where no alteration is made in the deliverance of the commissioners within eight days from the date of the decision, give the notice in the Gazette, and give the notifications to creditors directed by sections 127, 130, and 132 of the said Act. The provisions of this section shall not apply to trustees appointed under the Cessio Acts. Repealed 1913.

XVIII. *Testamentary trustees, &c. may apply to court for superintendence order as to investment and distribution of estate.*—Section 166 of the Bankruptcy (Scotland) Act, 1856, shall be and is hereby repealed, and in lieu thereof be it enacted that where a person deceased has left a settlement appointing trustees or other persons with power to manage his estate, it shall be competent for such trustees or other persons to apply to the Court of Session for an order on the accountant to superintend their administration of the estate, in so far as it relates to the investment of the estate and the distribution thereof among the creditors of the deceased and the beneficiaries under Repealed 1921.

Repealed 1921.

the settlement, and the Court may grant such order accordingly; and, if such order be granted, the accountant shall annually examine and audit the accounts of such trustees or other persons, and at any time, if he thinks fit, he may report to the Court upon any question that may arise in the administration of the estate with regard to any of the foresaid matters, and obtain the directions of the Court thereupon.

XIX. *Application of Trusts Acts.*—The provisions of the Trusts (Scotland) Act, 1867, Amendment Act, 1887, shall apply to and include all trusts and trustees, as defined by the 2nd section of the Trusts (Scotland) Amendment Act, 1884.

XX. *Application of section 23 of Pupils Protection Act.*—Section 23 of the Pupils Protection Act (as to factories informally settled) shall be held to apply to all factories brought under the supervision of the accountant by virtue of this Act.

XXI. *Acts of Sederunt.*—It shall be competent to the Court of Session, and they are hereby authorised and required, from time to time to pass such Acts of Sederunt as shall be necessary or proper relating to all matters requisite for effectually carrying out the purposes of this Act.

XXII. *Interpretation.* — The expressions "Bankruptcy Acts" and "Cessio Acts" shall respectively have the meanings assigned to them by the 4th section of the Bankruptcy and Cessio (Scotland) Act, 1881.

XXIII. *Short Title.*—This Act may be cited as the Judicial Factors (Scotland) Act, 1889, and shall take effect on and after the 1st day of January 1890.

BOOK G.—JUDICIAL FACTORS.

CHAPTER I.—GENERAL.

(*Pupils Protection (Scotland) Act*, 1849, (12 & 13 *Vict. cap.* 51); *Judicial Factors (Scotland) Act*, 1889 (52 & 53 *Vict. cap.* 39); *Bankruptcy (Scotland) Act*, 1856 (19 & 20 *Vict. cap.* 79, *sec.* 164).)*

1. *Prints to be Boxed to Accountant.*—All petitions, answers, or other printed papers relative to the appointment of any judicial factor, or to any judicial factory, shall, when boxed to the Court, be also boxed to the Accountant of Court.

2. *Transmission of Processes to Accountant.*—The clerks of Court are authorised and directed to transmit to the Accountant at all times on his requisition the proceedings, or such part thereof as he may require, in all processes of judicial factory or other processes relative thereto depending in the Court, in so far as such proceedings may not at the time be required for the use of the Court.

3. *Time for Finding Caution.*—When not otherwise expressed in the interlocutor appointing a judicial factor, the time for finding caution shall be limited to one calendar month from the date of the interlocutor; on cause shown by application at any time before the expiry of that period the Court may prorogate the time for finding caution.

4. *Bonds of Caution Received by Accountant.*—The Accountant of Court shall receive bonds of caution offered for judicial factors. Section 102 of the Court of Session Act, 1868, is repealed so far as inconsistent herewith.

5. *Procedure in Finding Caution.*—On a judicial factor being appointed subject to caution being found, the process shall be forthwith transmitted to the Accountant of Court, in order that the matter of caution may be dealt with; and—

(*a*) the Accountant of Court shall, on the bond of caution being delivered to him, and on being satisfied as to its form and due execution, and as to the sufficiency of the cautioner, make a marking on the margin of the interlocutor sheet to the effect that caution has been received, adding his signature and the date; and such marking shall be an authority for extract of the appointment;

(*b*) where it is proposed that the caution be limited by the Court, as authorised by sec. 27 of the Judicial Factors Act, 1849, whether in the case of a private cautioner or of a public company, the Accountant of Court shall, after such inquiry as he thinks requisite, report on the proposed limitation to the Lord Ordinary, who may approve of or vary the limitation proposed, and that without enrolment or motion unless any party having interest shall have intimated to the clerk of the process that he desires to be heard;

* Imports reference to Bankruptcy (Scotland) Act, 1913.

(c) during the subsistence of a factory the Accountant may, with the approval of the Lord Ordinary, which may be obtained without enrolment or motion, call upon the factor to increase the amount of the existing cautionary bond, or to find new or additional caution, or to procure a company bond in substitution for or in addition to that of an existing cautioner, and the Accountant may, with the like approval, authorise the factor to decrease the amount of the existing caution;

(d) the Accountant shall, in January yearly, prepare and submit a list of approved guarantee companies for the consideration and approval of the Lord Ordinary.

6. *Premiums to Guarantee Companies and Expenses of Bond of Caution.*—The Accountant of Court shall allow as a charge against the factory estate (1) the premium paid by the factor where a company bond of caution has been accepted, or such part thereof as he deems proper, and (2) the expense of the necessary procedure in obtaining the approval of a bond of caution or the limitation, increase, or reduction of the amount; but the fact of such charge shall be taken into account by the Accountant of Court in fixing the factor's remuneration.

7. *Transmission of Inner House Proceedings to Junior Lord Ordinary.*—Where any incidental petition or note in a judicial factory is presented to the Junior Lord Ordinary in cases where the appointment of the judicial factor has been made by either Division of the Court, and the original proceedings have remained in the office of the clerk of such Division, the latter is hereby authorised and directed to transmit the said original proceedings to the clerk of the Junior Lord Ordinary; and the last-mentioned clerk is hereby authorised and directed to transmit of new, when required, the whole proceedings to the clerk of such Division.

8. *Tutor Dative's Bond of Caution to be Transmitted to Accountant.*—Upon the issuing of any gift of tutory-dative the King's and Lord Treasurer's Remembrancer shall forthwith transmit the bond of caution to the Accountant, who shall enter the appointment in his books.

9. *Definition of "Judicial Factor."* — The expression "judicial factor" in this chapter includes *curator bonis*, factor *loco tutoris*, factor *loco absentis*, and factor on trust or other estates, and also includes guardians where caution is required.

CHAPTER II. — JUDICIAL FACTORS UNDER THE BANKRUPTCY (SCOTLAND) ACT, 1856, SEC. 164.*

(19 & 20 *Vict. cap.* 79, *sec.* 164.)

In addition to the regulations in the foregoing chapter, the following shall apply to factories under sec. 164 of the Bankruptcy (Scotland) Act, 1856:—

1. *Form of Petition.* — Every petition presented to the Court under sec. 164 of said statute, for the appointment of a judicial factor on the estates of persons deceased, shall be in the form, and as nearly as may be in the terms, set forth in the schedule No. I., annexed to this chapter.

2. *Intimation in the* Edinburgh Gazette.— Besides intimation on the walls and minute book in common form, of which certificates shall be produced, intimation shall be made in the *Edinburgh Gazette*, according to the forms in schedule No. II.; and a full copy of the petition shall be served on such of the persons named in the petition, as representatives of the deceased, as are not parties thereto; and a copy of the *Edinburgh Gazette*, containing the intimation, and an execution or acknowledgment of service of the petition, shall be produced before the petition is disposed of.

3. *Interim Appointments.*—The Court shall not make the appointment of the judicial factor until the lapse of fourteen days, or such other time as the Court may fix, after both the publication of the notice in the *Gazette* and the date of service (when such service is required) of the petition on the representatives of the deceased: Provided, however, that the Court, if in any case it shall see cause to do so, may make an interim appointment of such factor at any earlier date.

4. *Notice Calling for Claims.*— In order to ascertain the claims upon the estate, the factor shall, within eight days of extracting his appointment, cause to be inserted in the *Edinburgh Gazette* a notice, in the form, or as nearly as may be, set forth in the schedule No. III., annexed to this chapter, and he shall also insert a similar notice in such newspapers as may appear to him to be proper.

5. *Claims.* — The factor shall examine the claims of the creditors, in order to ascertain whether the debts are justly due from the estate of the deceased, and may call for further evidence in support of the claims, and may, if he sees fit, require the creditors to constitute the same by decree in a competent Court, in an action to which the factor shall be called as a defender.

6. *Inventory of Estate.*—The factor shall, within six months at latest from the date on which his appointment shall have been extracted, lodge with the Accountant a full inventory of the estate of the deceased, and shall produce therewith or exhibit all such writs and documents of importance belonging to the estate as may have been obtained by him, and shall at the same time report a state of the debts appearing to be due by the deceased, distinguishing those for which claims have been lodged by creditors, and the evidence upon which the same rest, and the claims made and lodged with him by persons interested in the succession of the deceased, and the grounds thereof. And the said inventory, when adjusted and signed as after mentioned, with the state of debts, shall remain in the possession of the Accountant; and all creditors

* Imports reference to Bankruptcy (Scotland) Act, 1913.

and persons interested in the succession of the deceased, or their agents, shall have access to see the same in the hands of the Accountant, at his office.

7. *Scheme of Division.*—The judicial factor shall prepare a state of funds and scheme of division amongst the creditors, and shall lay the same before the Accountant, along with all writings and documents upon which it proceeds, and shall afford to the Accountant all explanations thereon which may be required by him. And the Accountant shall make a report in writing on the said state of funds and scheme of division, containing such observations thereon as he shall think fit and proper to be submitted to the Court.

8. *Notice of Scheme of Division to Creditors.*—Immediately on the Accountant's report being made, the factor shall lodge the same in Court, and shall transmit to each person who has lodged with him a claim on the estate of the deceased a notice by post intimating that the state of funds and scheme of division, and report thereon, have been lodged in Court, and stating the amount for which the creditor has been ranked, and whether his claim is to be paid in full, or by a dividend, and the amount thereof, and in case of claims rejected, stating that fact; and a notice, according to the form in schedule No. IV., annexed to this chapter, shall also be inserted in the *Edinburgh Gazette;* and if any persons, other than those who have lodged claims with the factor, shall be stated in the petition to the Court, or in the books, deed of settlement, or other papers of the defunct, to be creditors of the estate or interested therein; or if the factor shall otherwise have reason to believe that other persons are in either of these predicaments, he shall give notice by letters, through the post office, to such persons, that no dividend is allotted to them in the scheme of dividend.

9. *Objections to Scheme of Division.* — All creditors, and other persons interested in the succession of the deceased, shall be entitled to examine the state of funds and scheme of division lodged in Court, and also the claims and the vouchers, or evidence thereof lodged with the factor; and any creditor, or other person dissatisfied with the state of funds and scheme of division, may lodge a note of objections thereto, signed by counsel, with the clerk of the process, within three weeks from the last date of such notices; and till the lapse of said period of three weeks, the Court shall not be moved to approve of the state of funds or scheme of division.

10. *Objections to be Disposed of by the Court.*—If objections are lodged to the state of funds and scheme of division, the Court shall dispose of the same, after hearing counsel for the objecting creditors and judicial factor, and making all necessary investigation in regard to the same. If the objections be sustained to any extent, the necessary alterations shall be made on the said state and scheme.

11. *Adjusted Scheme of Division.*—When the scheme of division is adjusted, it shall be approved of by the Court; and the factor shall pay, deliver, or convey to the parties therein set forth, the sums or subjects allocated to them respectively in the said scheme of division.

12. *Partial Dividends on First Scheme of Division.*—Where a partial division of funds among the creditors who have claimed may be made with safety to the interests of all concerned, the judicial factor may, with the approval of the Accountant, prepare a state of the funds and first scheme of division, and that at as early a period after the time notified for lodging the claims of creditors upon the estate as he may be enabled to do it; and the same having been submitted to the Accountant, and reported on by him to the Court, and notice having been given in terms of section 8, to each creditor, of such state of funds and first scheme of division having been lodged, the Court may, six months having elapsed from the day of the death of the deceased, on considering the same, approve of that scheme of division, and the factor shall pay, deliver, or convey, in terms thereof: Provided always, that dividends corresponding to the amount of the claims of creditors whose debts have not at that period been admitted by the judicial factor, or whose debts are future or contingent, and also the full amount of such debts as are claimed as preferable, but the preference is not admitted by the factor, shall be retained and set apart to meet such claims, if ultimately sustained, or when the same shall become payable or prestable.

13. *Deathbed and Funeral Expenses, etc., of Deceased.*—The factor shall be entitled, out of the first of the funds realised by him, and without waiting for the expiry of six months from the death of the deceased, to pay the deathbed and funeral expenses of the deceased, rent, taxes, and such servants' wages as are privileged debts, and interest becoming due, or past due, to creditors having preference over the estate.

14. *Disposal of Surplus of Estate.* — In the event of there being a residue after payment of the creditors, the judicial factor shall submit to the Accountant a statement of the amount of the residue, the parties claiming the same, and their respective grounds of claim; and he shall pay over the said residue to the party or parties found entitled thereto by the Lord Ordinary on report by the Accountant.

15. *Discharge of Factor.*—When applying to the Court for his discharge, the factor shall intimate the petition to the representatives of the deceased, and insert a notice thereof in the *Edinburgh Gazette* in terms of schedule No. IV., annexed to this chapter, and the petition shall not be disposed of until fourteen days after such insertion.

SCHEDULES.

No. I.

——— Division. [Junior Lord Ordinary.
——— Clerk.

Unto the Right Honourable the Lords of Council and Session,

The Petition of [here state the names and designations of the petitioners, and

whether they apply in the character of creditors or of persons having interest in the succession of the party deceased].

Humbly Sheweth—That [naming and designing the party deceased] died on the day of and left no settlement appointing trustees or other parties to manage his estate, or part thereof [or that the trustees or other parties appointed by him to manage his estate have not accepted or acted].

That the petitioner (or petitioners) [here state, if creditors, the nature and amount of the debt due to them by the deceased, and how constituted, vouched, or established, and referring to the evidence of the existence of the debt, as produced with the petition, or, if persons having an interest in the succession, the nature of their interest in the succession].

That the estate of the said deceased , so far as known to the petitioner (or petitioners), consists of [here state the nature of the estate, whether of heritable or moveable, stock in trade, interest in a partnership, professional business, or whatever else it may be. State any other facts which may appear to be of importance in the particular case].

That the following persons are, to the best of the petitioner's knowledge and belief, the legal representatives of the deceased, or have an interest in his estate. [Here state the names and designations of those persons, their degree of relationship, or the nature of their interest in the succession.]

That the following persons are, to the best of the petitioner's knowledge and belief, all the creditors of the deceased [name and design them].

That the petitioner is (or petitioners are) entitled, under sec. 164 of the Bankruptcy (Scotland) Act, 1856, to make the present application for the appointment of a judicial factor over the estate of the said deceased, with the powers therein conferred.

May it therefore please your Lordships to appoint intimation of this petition to be made on the walls and in the minute-book, in common form, and in the *Edinburgh Gazette*, and otherwise in such other form and way, and to such persons as to your Lordships may seem fit; and thereafter, on resuming consideration of the same, to appoint such fit person as to your Lordships shall seem proper to be judicial factor on the estate of the said deceased , and that with all the powers of the statute, he always finding caution before extract; or to do otherwise in the premises as to your Lordships shall seem proper.

[Signed by Counsel.]

No. II.

NOTICE TO BE INSERTED IN THE *Edinburgh Gazette.*

To the creditors and other persons interested in the succession of the deceased [naming and designing him].

A Petition has been presented to the Court of Session, Division, Junior Lord Ordinary, Mr. clerk, by , a creditor [or creditors], to the amount required [or by having an interest in the succession of the said deceased], the said deceased having left no settlement appointing trustees, or other parties having power to manage his estate [or as the case may be, the trustees, under the deceased's settlement, not accepting or acting], praying, under the Act 19 & 20 Vict. cap. 79, sec. 164, for the appointment of a judicial factor upon said estate; and which Petition will be again moved in Court, on or after the day of , of all which notice is hereby given.

[Date.] [Signature of petitioner's agent, and adding his place of business.]

No. III.

To the creditors and other persons interested in the succession of the deceased [designing him].

A. B. [naming and designing him], having been appointed by the Court of Session judicial factor on the estate of the said deceased under the Act 19 & 20 Vict. cap. 79, sec. 164, requires all the lawful creditors of the said and other persons interested in his estate, to lodge with the judicial factor, within four months after the date of this notice, a statement of their claims as creditors of the deceased, or as otherwise interested in his estate; with such vouchers or other written evidence as they may have to found upon in support of their claims; in order to the same being considered and reported upon by the judicial factor.

[Date.] [Signature and address of judicial factor.]

No. IV.

To the creditors and other persons interested in the succession of the deceased [designing him].

A. B., judicial factor upon the estate of the said deceased , hereby intimates that he has prepared and lodged in Court, Division, Junior Lord Ordinary, Mr. clerk, a state of funds and scheme of division of the said estate, to be considered and approved of by the Court, of which all concerned are hereby required to take notice.

[Date.] [Signature and address of judicial factor.]

No. V.

To the creditors and other persons interested in the succession of the deceased [designing him].

A. B., judicial factor on the estate of the deceased , has presented a

BOOK E.—THE BILL CHAMBER.

Chapter II.—Suspensions and Interdicts.

XXVII. *Extract Interlocutors in Bankruptcy Proceedings.*—All extracts of interlocutors pronounced by the Lord Ordinary or the Court under the Bankruptcy (Scotland) Act, 1856, and Bankruptcy and Real Securities Act, 1857, shall be prepared and issued by the clerk of the Bills in the same manner as extracts were formerly issued under the statute 2 & 3 Vict. c. 41.

Chapter IV.—Proceedings under Special Statutes.

1. *Enforcement of Orders under the Companies Consolidation Act*, 1908 (8 *Edw. VII. c.* 69, *s.* 180), *and the Bankruptcy Act*, 1869 (46 & 47 *Vict. c.* 52, *ss.* 117, 118).—(*a*) On production to the clerk of the Bills of an office copy of any order made by any of the Courts having jurisdiction in bankruptcy in England or Ireland respectively under the bankruptcy statutes—or of any order made by the Courts in England or Ireland respectively for or in course of the winding up of any company under the Companies Acts, the same shall be registered *in extenso* in a register to be kept for that purpose in the office of the said clerk, on payment of the fee mentioned in the schedule annexed hereto; and the said register shall be open to inspection of all concerned, on payment of the fee mentioned in the said schedule.

(*b*) After registration as aforesaid, the clerk of the Bills shall append to such office copy a certificate subscribed by him of the registration thereof, in the terms mentioned in said schedule; and the same being so registered and certified, shall be a sufficient warrant to officers of Court to charge for payment of the sums recoverable under such order, and of the expense of registering the same, and to use any further diligence that may be competent, in the same manner as if such order had been a decree originally pronounced in the Court of Session on the date of such registration as aforesaid.

Schedule.

Fee for registration of orders	£0 5 0
Fee for search in register	0 2 6

Form of Certificate.

"Registered in terms of the Act 32 & 33 Vict. c. 71," or "of the Act 25 & 26 Vict. c. 89" (as the case may be), and relative Act of Sederunt, dated 21st June 1883.

Clerk of the Bills.

"Bill Chamber,
"Edinburgh, 191 ."

CODIFYING ACT OF SEDERUNT.

BOOK K.—FEES AND EXPENSES.

TABLE OF FEES PAYABLE

IN THE

DEPARTMENT OF THE ACCOUNTANT OF COURT.

In Factories, Curatories, and Private Trusts.

For receiving, examining, recording, and delivering up Bonds of Caution,	£0	10	6
On lodging Inventory, and adjusting same, when the estates exceed £100, but does not exceed £1000,	0	5	0
and 5s. per £1000, or part thereof, additional, but not to exceed £10, 10s.			
For each search of the Records of subsisting, exhausted, or of new factories, or for any information therein contained,	0	5	0
For auditing each account where factor's commission is under £1, 1s.,	0	2	6
For auditing each account where factor's commission is under £2, 2s.,	0	5	0
For auditing each account where factor's commission is £2, 2s., and upwards,	0	10	6
and 10 per cent. on the factor's commission as allowed, or what would have been the factor's full commission if chargeable or fully allowed.			
For discharges, reports on application for special powers, or other special reports, 10s. 6d. to	10	10	0
For reports on schemes of division,	1	1	0
and 10s. 6d. extra for each £1000, or part thereof, divided.			

In Bankruptcies.

On lodging copy Act and warrant,	0	10	0
For supervising proceedings, examining and issuing acknowledgment of Sederunt Book, and reporting on trustee's discharge, 1 per cent. on amount divided amongst ordinary creditors, but only when total amount for division is over £100.			
For inspection of Sederunt Book,	0	2	6
For report on bankrupt's petition for discharge,	1	1	0
For concurrence in private sales, if £1000 or under,	1	1	0
and 10s. 6d. extra for each additional £1000, or part thereof.			
For special reports,	1	1	0
For reports regarding trustees' commission,	0	10	6
and 2 per cent. on the trustees' commission as fixed, but not to exceed £10, 10s.			
For each search of the records of subsisting, exhausted, or of new sequestrations, or for any information therein contained,	0	5	0

In Cessios.

No charge for lodging circular or supervising proceedings.			
For report on bankrupt's petition for discharge,	0	10	6

In Consignations.

For lodging consignations,	£0 2 6
For producing or delivering up,	0 2 6

and 1s. for every £100 uplifted, but not to exceed £2, 2s.

Copying Fees.

For certified copies, each page,	0 2 6

J. P. B. ROBERTSON.

ACT OF SEDERUNT

Applying the Provisions of C. A. S. Relative to Proceedings under the Bankruptcy (Scotland) Act, 1856, and certain Amending Acts, to Proceedings under the Bankruptcy (Scotland) Act, 1913.—[*6th January* 1914.]

The Lords of Council and Session, considering that the Bankruptcy (Scotland) Act, 1856, and certain Acts amending the same, have been repealed by the Bankruptcy (Scotland) Act, 1913, while most of their provisions have been re-enacted therein, and that it is necessary to make applicable to proceedings under the latter statute provisions contained in the Codifying Act of Sederunt relative to proceedings under the statutes first above-mentioned, do hereby enact and declare as follows, viz.:—

In C. A. S. any reference to the Bankruptcy (Scotland) Act, 1856, or statutes amending the same, shall be held to import a reference to the Bankruptcy (Scotland) Act, 1913, and the provisions of C. A. S. shall have force and effect under such last-mentioned statute, but in so far always as not inconsistent therewith.

And the Lords appoint this Act to be entered in the Books of Sederunt, and to be printed and published in common form.

(Signed) ALEX. URE, *I.P.D.*

NOTES BY THE ACCOUNTANT OF COURT

FOR THE

GUIDANCE OF TRUSTEES IN SEQUESTRATIONS.

WITH NOTES OF FEES PAYABLE, AND APPENDIX.

The Act of Parliament applicable to the administration of estates in Bankruptcy, the duties of trustees and commissioners, and the supervision thereof by the Accountant of Court, is the Bankruptcy (Scotland) Act, 1913.

It is to be observed that the accountant has no right to interfere with the *administration and management* of estates in bankruptcy; his power is one of *control* of trustees and commissioners, to the effect of providing for the performance of their duties. This power is *official*, rather than *judicial*. It is exercised subject to the directions of the Court.

I.—*Noting of Claims by Trustee.*

The Act provides (section 46) that the trustee shall, on production of the oaths and grounds of debt by creditors, mark the same with his initials, and make an entry thereof in the sederunt book, and of the date when the same were produced.

II.—*Transmission to the Accountant of Copy of Act and Warrant Confirming Trustees.*

Section 70 of the Act provides that the sheriff-clerk shall issue to the trustee the act and warrant of his confirmation, and shall, within three days thereafter, transmit a copy thereof to the accountant, for entry in the register of sequestrations.

III.—*Taking Possession of, Managing, and Realising the Estate.*

Under section 76 of the Act it is the duty of the trustee to take possession of the bankrupt's estate and effects, and of his title-deeds, books, bills, vouchers, and other papers and documents. He is next required to make up an inventory of the estate and effects, and a valuation showing the estimated value, and the annual revenue thereof, and forthwith to transmit a copy of such inventory and valuation to the accountant. A form of inventory, and notes applicable to it, are appended.

Under section 78 the trustee "shall manage, realise, and recover the estate belonging to the bankrupt, wherever situated" (including non-vested contingent rights), "and convert the same into money, according to the directions given by the creditors at any meeting; and, if no such directions are given, he shall do so with the advice of the commissioners."

(The duties of the commissioners in relation to the trustee are to audit his accounts, fix his commission, superintend his proceedings, and give advice and assistance relative to his management. See sections 81 and 121.)

A power is given to the trustee, with the consent of the commissioners, to compound and transact and refer to arbitration, questions regarding the estate, or claims made thereon. See section 172.

IV.—*Examination of the Bankrupt, and of Others who can give Information Relative to the Estate.*

The trustee's duties in regard the bankrupt's examination will be found stated in sections 83 to 91 inclusive. The 83rd section provides that the trustee shall advertise his election, and the examination of the bankrupt, etc., in the *Gazette*, and shall send special notices to the creditors. A copy of this and of all other circulars must be sent to the accountant (section 80). The other sections deal more particularly with the examination.

Besides affording all necessary information in regard to the position of the bankrupt's affairs at the date of the sequestration, the examination ought to disclose the causes of the bankruptcy, where these are not set forth by the bankrupt in his state of affairs, so that parties interested may be able to ascertain, from one or other of these sources, whether the bankruptcy has arisen from innocent misfortunes or losses in business, or from culpable or undue conduct

(see section 143). If more than one of these causes have operated to bring about the result of bankruptcy, the examination and state ought to make it clear, in so far as practicable, to what extent the deficiency has been created by the separate operation of these respective causes.

The following example may be given to illustrate the foregoing observations:—

Assets, say			£500 0 0
Liabilities, say			1000 0 0
	Amount of deficiency		£500 0 0
Arising as follows:—			
From losses in business arising from bad debts, say	£100 0 0		
,, losses on raising money by accommodation bills, say	100 0 0		
,, losses on speculation in dealing in stocks and shares, say	100 0 0		
,, losses arising from pawning or selling goods by auction out of the ordinary course of trade	100 0 0		
Extravagance arising from expenses of living, not met by the returns or profits of business, say	100 0 0		
			£500 0 0

Where it is impossible to give an account of the deficiency in figures by reason of the failure of the bankrupt to keep books, this should be brought out distinctly in the examination.

Where the causes of bankruptcy have been satisfactorily disclosed by the bankrupt by explanations given to the trustee personally, it may not be necessary to bring out these explanations in the public examination of the bankrupt, but the trustee ought to minute such explanations, either in his report to the second meeting of creditors, or otherwise, so that they may appear in the record in the sederunt book.

It occurs in some sequestrations that the bankrupt has been engaged in concocting claims by false entries in books, or by fictitious accounts and vouchers. It also not infrequently occurs that the bankrupt has given fraudulent preferences to creditors, which may be set aside. In either of these cases the examination ought to bear fully and distinctly upon such transactions.

The examination, state of affairs, and explanations are of the utmost importance, as forming the foundation of the trustee's report to the second meeting of creditors (section 92) and of his report on the bankrupt's conduct (section 143).

If the bankrupt has been guilty of fraudulent conduct for which he may be prosecuted criminally, these documents ought to disclose the particulars of the offences with which he is chargeable. They ought also to bear evidence on the subject of fraudulent concealment of effects, or other elements in the bankrupt's trading or conduct, which are material in the consideration of his right to discharge.

The trustee, in conducting the examination, is bound to keep in view the provisions as regards fraudulent bankruptcy contained in the Act, section 178.

V.—*The Trustee's Report to the Second Meeting of Creditors.*

This report is required under the 92nd section. It involves necessarily a state of the bankrupt's affairs, and an estimate of what the estate may produce; and it is also an appropriate medium for communicating with the creditors on the subject of any matters relating to the administration and management, in regard to which the trustee may require their directions under the 78th section, or for submitting to them any facts connected with the bankrupt's conduct, which he desires to bring before them.

VI.—*Making up Accounts, Audit thereof, and Transmission of Copies to Accountant.*

It is enacted (section 80) that the trustee "shall also keep regular accounts of the affairs of the estate, and transmit to the accountant, before each of the periods herein assigned for payment of a dividend, a copy, certified by himself, of such account, in so far as not previously transmitted."

In sections 121, 127, and 129 the accounts, and the periods at which these are to be made up, are specified. These periods are:—

1*st.* At the end of four months from date of award of sequestration.
2*nd.* At the end of eight months ,, ,, ,,
3*rd.* At the end of eleven months ,, ,, ,, , and
Each succeeding account at the end of three months from the close of the immediately preceding account.

It may be useful for trustees to present their accounts of intromissions in a classified form; but, under any circumstances, it is proper that the trustee should present the accounts of intromissions in the form of an account-current, or progressive state, showing the state of the balance from day to day. It is provided by the Act (section 121) that the trustee shall, along with his accounts of intromissions, make up a state of the whole estate of the bankrupt

of the funds recovered by him, and of the property outstanding (specifying the cause why it has not been recovered). A form of a progressive state, and also of a state of the whole estate recovered and outstanding, is appended.

The duties of the commissioners, in relation to the audit of the accounts, are set forth in separate notes issued by the accountant for their guidance.

Trustees are directed by the Act to transmit to the accountant copies, *certified by themselves*, of their accounts *before* each of the periods assigned for payment of a dividend. The periods for payment of dividends are assigned in sections 126, 128, and 129; and copies of the accounts ought to be transmitted before these periods, whether a dividend has been declared or postponed. The periods before which copies of the trustee's accounts ought to be transmitted to the accountant, unless these periods are altered as aftermentioned (see Note VIII.), are:—

First account, before the end of six months from the date of *awarding* sequestration.
Second account, before the end of ten months
Third account, before the end of thirteen months " " " , and
Each succeeding account before the end of three months from the preceding period for transmission.

Where the sequestration embraces both the company's and individual partners' estates, it is *essential* that the intromissions with these be kept separate and distinct.

It is provided by the 80th section that the accounts shall be patent to the commissioners and to the creditors or their agents, at all times.

VII.—*Deposit of Money in Bank.*

It is enacted (section 78): "The trustee shall lodge all money which he shall receive in such bank as the majority of the creditors in number and value, at any general meeting, shall appoint, and failing such appointment, in any joint-stock bank of issue in Scotland (provided that the bank be not one in which the trustee shall be an acting partner, manager, agent, or cashier); and the money shall be lodged in the name of the trustee, in his official character under this Act."

The penalties for failure in this duty are: (1) (by section 79) "If the trustee shall keep in his hands any sum exceeding £50 belonging to the estate for more than ten days, he shall pay interest to the creditors at the rate of £20 per centum per annum on the excess of such sum above £50, for such time as the same shall be in his hands beyond ten days; and unless the money has been so kept from innocent causes, the trustee shall be dismissed from his office upon petition to the Lord Ordinary or Sheriff, by any creditor, and have no claim to remuneration, and shall be liable in expenses"; and (2) by the 158th section, the failure in duty may be reported by the accountant to the Lord Ordinary or the Sheriff, who shall have power to censure such trustees, or remove them from their office, or otherwise deal with them as the justice of the case may require.

The Court of Session has found (*Freyd's Trustee*, 29th June 1864, 2 M. 1293) that the fund set apart by the commissioners for the payment of a dividend forms part of the funds of the sequestrated estate, and is subject to the provisions before quoted as to the lodging of the moneys of the estate in bank. According to this decision, the trustee is not entitled to withdraw from bank the amount set apart for payment of a dividend at the time at which it is payable, but only to draw from time to time such sums as may be required to meet the payments to the creditors as they claim their dividends. If a trustee hold in his hands moneys of the estate (whether set apart for dividends or not) beyond the limit prescribed by the section of the Act before quoted, he is liable to the penalties thereby imposed.

VIII.—*Adjudication on Claim and Payment of Dividends.*

By the 118th section the trustee may, with the consent of the commissioners, dispense with the necessity for lodging oaths relative to certain preferable debts, and may pay such debts before the period for payment of the first dividend.

By the 123rd section the trustee may, *at any time after a claim has been lodged*, require further evidence in support thereof, and, where a dividend is to be paid, the trustee shall, within fourteen days after the expiry of the first four months, examine the oaths and grounds of debt, and in writing reject or admit them, or require further evidence, and he shall complete the list of creditors entitled to draw a dividend (see sections 119 and 120).

By the 124th section the trustee shall give notice of the dividend in the *Gazette*, and by circular; and, when he has rejected any claim, he shall notify the same by letter with a copy of his deliverance.

By the 125th section the trustee shall, before the expiration of six months from the date of award, make up a scheme of division, and send notice to each creditor of the amount of his dividend.

By the 126th section the trustee shall pay the dividend on the first lawful day after the expiration of the six months, and shall lodge in bank dividends under appeal, or on contingent claims.

The 127th, 128th, and 129th sections provide for similar procedure in the case of subsequent dividends.

The 130th section authorises the acceleration of dividends, if found to be expedient.

The 131st section provides for the postponement of dividends, and for dispensing with the *Gazette* notice thereof, if the commissioners think fit.

The 132nd section authorises the alteration of the statutory periods in cases in which the winding up is necessarily postponed. In this way the statutory periods may be extended and reduced in number, and the expenses consequently diminished.

IX.—*Annual Return to the Sheriff-Clerks.*

It is enacted as follows (section 157): "Each trustee shall, within fourteen days after the 31st day of December in each year, or on the first lawful day after expiry of the said fourteen days, deliver, free of expense, to the sheriff-clerk of the county, a return, in the form of Schedule H hereunto annexed, of every sequestration in which he is trustee." . . . "And any trustee who shall fail to make such return shall be removable from his office at the instance of any one creditor, or of the accountant, or subject to such censure as the Lord Ordinary or the Sheriff may think suitable, and be found liable in expenses."

The accountant is in the practice of issuing, annually, at the proper period, forms explaining the mode in which these returns ought to be made up.

In cases where the estates of a company and those of the individual partners are embraced, care must be taken to keep these estates distinct in the return.

The trustee's return is of special importance, as affording the creditors information regarding the progress of the winding-up, and as furnishing material for the accountant's annual report to the Court of Session.

X.—*The Sequestration Sederunt Book.*

It is the duty of the trustee to keep the sederunt book, which it is provided shall be patent to the commissioners and to the creditors or their agents, at all times (see section 80).

There are certain documents and records which the Act requires to be engrossed in the sederunt book:—

1. The election of the commissioners, which is to be declared by a deliverance of the sheriff in the sederunt book (section 72).
2. An entry is to be made by the trustee of the production to him by creditors of their oaths and grounds of debt (section 46).
3. The intimation of the recall of a mandate by a creditor in favour of a commissioner is to be recorded (section 72).
4. The state of affairs made up by the bankrupt is to be engrossed (section 77).
5. The oath which the bankrupt is required to make before the close of his examination must be engrossed (section 91).
6. The minutes of creditors and of commissioners, states of accounts, reports, circulars sent by trustee, and certificates of their having been posted, and all proceedings necessary to give a correct view of the management of the estate, must be recorded (section 80).
7. The commissioners are required to certify, by a writing under their hands, engrossed or copied in the sederunt book, the balance due to or by the trustee in his account with the estate, as at the expiration of the periods at which the trustee's accounts are ordered to be made up (section 121).
8. A copy of the trustee's report on the bankrupt's conduct must be engrossed (section 143).

The accountant is empowered (section 159) to require *exhibition* of the sederunt book.

XI.—*Final Meeting of Creditors and Trustee's Discharge.*

It is provided by the 152nd section that, after a final division of the funds, the trustee shall call a meeting of the creditors by advertisement in the *Gazette* to be held not sooner than fourteen days after such publication, and by letters to the creditors, to consider as to an application for his discharge, and he shall lay before the creditors the sederunt book, accounts, and a list of unclaimed dividends, and the creditors may declare their opinion of his conduct.

The trustee must, before his discharge, transmit the sederunt book to the accountant (section 153).

Where the last return made to the sheriff-clerk (section 157) does not contain the results of the whole accounting, the trustee is requested to transmit to the accountant, either in a separate form or engrossed in the sederunt book, a continuation of the return, embracing the results of his whole intromissions, under the proper heads given in the statutory form of the return. He must also transmit a continuation of his accounts from the statutory period immediately preceding, down to the actual close of his accounts.

The trustee must deposit the unclaimed dividends and any unapplied balance in bank, and

transmit the bank deposit-receipts to the accountant, in terms of section 153. A form of a deposit-receipt for unclaimed dividends is subjoined.*

The transmission of the sederunt book, before the trustee's discharge, is required from *every* trustee in any sequestration (section 153). There is no distinction made regarding this duty between sequestrations wound up by composition and those wound up by division of the funds.

On the trustee's discharge being granted an extract thereof will be transmitted to the accountant by the clerk of Court (section 152).

XII.—*Composition Settlements.*

Sections 134 to 142 and section 145 detail the trustee's duties in sequestrations in which a composition settlement is carried through. The accountant does not think it necessary to detail these, but he wishes to point out that section 135 provides that the Lord Ordinary or sheriff, if he shall find that the offer not only has been duly made and assented to, but "is *reasonable*," shall pronounce a deliverance approving thereof.

In cases of sequestrations wound up under composition-contracts, the trustee ought to transmit to the accountant at the proper periods as above—

1. Copies of his accounts, certified by himself, brought down to the statutory periods (for making up such accounts) which may have occurred before the composition shall have been approved of; and

2. Copy of his final account.

Section 137 provides that the judge, on discharging the bankrupt, shall declare the sequestration at an end.

The trustee, however, in order to obtain judicial discharge and delivery of his bond of caution, must transmit the sederunt book to the accountant in terms of the 153rd section, having engrossed in it (in addition to the documents necessary both in composition and division cases), (1) the circular letter and abstract state of affairs, and valuation of the estate (sections 134 and 136) sent to the creditors previous to the meeting at which the composition was decided on, with certificate of postage thereof; (2) the bond of caution for the composition; (3) the trustee's report to the sheriff as to the composition.

XIII.—*Trustee's Report on the Bankrupt's Conduct.*

The trustee is required to prepare this report *as soon as may be after the bankrupt's examination*, and to engross a copy of it in the sederunt book under the provisions of the 143rd section. It must be produced in the proceedings for the bankrupt's discharge, in terms of that section, and it is also evidence which may be founded on under the provisions of the 149th section of the Act. The 143rd section specifies the particulars of the bankrupt's conduct upon which the trustee is required to report. It may be possible, in some cases, to adopt in this report the very words of the Act; but these words ought to be employed with caution, and where there are any peculiar circumstances connected with the conduct of the bankrupt, or the causes of the bankruptcy (such as fraudulent concealment of estate or effects, refusal to comply with the provisions of the Bankruptcy Act, reckless trading, betting, gambling, extravagance, or failure to keep proper books), these ought to be clearly brought out. If the trustee should report generally in the words of the statute in a case where there were, in point of fact, elements which ought to have been set forth specially for the information of the judge in dealing with the bankrupt's application for discharge, he may be called on afterwards in Court to justify his report.

It has already been suggested in these notes that the examination of the bankrupt, and of

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* *Form of Deposit-Receipt for Unclaimed Dividends.*

£ (Date)

Received on account of the accountant of Court by the hands of A. B. (*design*), trustee in the sequestration of C. D. (*design*), the sum of , being the amount of dividends unclaimed in said sequestration, conform to list annexed, which is carried to the "account of unclaimed dividends" in terms of the Bankruptcy (Scotland) Act, 1913, section 153.

(Signature of bank officer.)

List of Unclaimed Dividends referred to in the foregoing Receipt.

Names and Designations of Creditors entitled to Dividends.	Amount of Claims.	Particulars of Dividends.	Amount Deposited.
E. F., merchant in G. - - - -	£	3rd dividend, being at the rate of per pound on ordinary claims.	£

others who can give information relative to the estate, the bankrupt's state of affairs, and the explanations which the bankrupt may have given the trustee, afford the materials upon which this report ought to be based.

The trustee is not entitled to any fee for his report on the bankrupt's conduct. (See *White* v. *Robertson*, 19th March 1879, 6 R. 854.)

XIV.—*Recording Abbreviate of Sequestration.*

By section 44 of the Act the effect of the recorded abbreviate of sequestration expires on the lapse of five years, unless it is renewed by memorandum in the form of Schedule A, No. 4, of the Act; and the trustee is required, unless he has been discharged, so to record it anew.

XV.—*Public Sale of Heritable Estate.*

The trustee may sell the heritable estate publicly:—

1. With concurrence of the heritable creditors (section 109); or,
2. Without such concurrence, on certain conditions (section 110).

XVI.—*Sale of Heritable Estate by Private Bargain.*

It is provided by section 111 that "It shall be competent for the trustee, with concurrence of a majority of the creditors in number and value, and of the heritable creditors, if any, and of the accountant, to sell the heritable estate by private bargain, on such terms and conditions regarding price and otherwise, as the trustee, with concurrence of those parties, may fix."

The accountant in these cases requires the trustee (1) to exhibit the missives of sale showing the terms and conditions of the proposed sale; (2) to exhibit a valuation or other satisfactory evidence of the value of the subjects proposed to be sold; (3) to exhibit minutes of creditors and commissioners or other evidence that the creditors and commissioners approve of the proposed sale; (4) to lodge with the accountant a list of creditors, with the amount of their claims, showing those who have concurred, and a certificate by the trustee that the list is a complete and correct one, and that the whole creditors holding heritable securities *affecting the subjects for sale*, and that a majority, in number and value, of the ordinary creditors, have concurred in the proposed sale, and in the terms and conditions of it.

If the trustee satisfy the accountant on these heads, the accountant will pronounce an order granting his concurrence, which may be used as part of the title. The accountant does not consider it expedient that he should become a party to the disposition to the purchaser.

XVII.—*Cases of Fraudulent Conduct on the Part of Bankrupts.*

Section 180 of the Act provides that it shall be the duty of the trustee to report all offences under the Act to the Lord Advocate, who shall direct such inquiry and take such proceedings as he shall think fit.

XVIII.—*Law Agency in Sequestrations.*

As there appears to be in some places a misunderstanding as to the duties which a trustee is bound to perform himself and for which he is remunerated by his commission, and as to those which he is entitled to employ an agent to perform at the expense of the sequestrated estate, the accountant thinks it right to note the law on the subject, so far as he understands it.

In the foregoing notes he has endeavoured to point out the duties which the Act directs the trustee to perform, and for which duties he is remunerated by his commission. A person accepting the office of trustee is expected to understand these duties, and to be able to perform them personally, and if he require any assistance he should obtain it at his own expense.

The trustee is only entitled to have the services of a law agent in matters properly pertaining to that profession, *i.e.* in conducting litigation, in conveyancing, and in giving or procuring advice on legal difficulties which may occur.

It is the trustee's duty to examine the law accounts before they are taxed, to submit them, if necessary, to the commissioners, and, if necessary, to appear, or to be represented, before the taxor at the taxation.

The duties of the commissioners in relation to the taxation and payment of the business accounts are pointed out in the accountant's Notes for the Guidance of Commissioners.

XIX.—*Trustee's Commission.*

The only remuneration for his services to which a trustee is entitled is his commission, as the same may be fixed by the commissioners, subject to an appeal to the accountant in terms of section 122 of the Act.

By section 121 the commissioners are required to "settle the amount" of the commission or fee, and by section 122 the trustee is required to intimate by circular to every creditor on the estate, and to the bankrupt, the deliverance of the commissioners fixing such, and a right of appeal follows thereon. *The actual sum* allowed, and the realisations to which it applies, should therefore be recorded in the minute and repeated in the circular.

The accountant holds that the commission for the period under review must be "settled," and that the commissioners cannot authorise the trustee to take a "payment to account," or to retain as extra commission any subsequent unapplied balance.

The accountant thinks it right to draw attention to the opinions of the Lord President and Lord Shand, in the case of *Lindsay* v. *Hendrie* (15th June 1880, 7 R. 911), on the subject of paying the trustee for clerk's writings. The Lord President stated: "The statute has fixed that no form of remuneration shall be allowed to the trustee except commission." Lord Shand stated: "The charge for clerk's writings in addition to commission is not sanctioned by the statute, and cannot be allowed by the trustee. In a case where an unusual amount of writing occurs, this ought to be taken into account in fixing the commission."

XX.—*Mandatories.*

A trustee, or his partner, cannot act as mandatory at a meeting of creditors. (See *Maxwell Witham* v. *Teenan's Trustee*, 20th March 1884, 11 Rettie, 776.)

Notwithstanding this, trustees or their partners sometimes hold mandates from creditors, and occasionally at the final meeting there are no creditors present, but only the trustee, or his partner, as a mandatory, who cannot constitute a meeting. The accountant considers that when a trustee has duly called the final meeting and no creditor appears, instead of trying to constitute a meeting, he ought to prepare a certificate to the effect that the meeting was duly called, that he attended at the time and place intimated, produced the *Gazette* containing the notice of the meeting, copy of the circular calling it, certificate of postage thereof, list of unclaimed dividends, and the sederunt book, but that no creditor appeared. This certificate ought to be lodged with the petition for discharge, and a copy of it engrossed in the sederunt book.

J. CAMPBELL PENNEY,
Accountant of Court.

H.M. New Register House,
Edinburgh, 2nd January 1914.

APPENDIX.

No. I.—Form of Inventory and Valuation.

Inventory and valuation of the estate and effects belonging to A. B., Bookseller, Stationer, and Bookbinder in C., sequestrated on 1st December 1914, made up by E. F. (*designation*) in G., trustee on his sequestrated estate, showing also the annual revenue thereof, in terms of the Bankruptcy (Scotland) Act, 1913, section 76.

I. Real or Heritable Estate in Scotland:—

Dwelling-house with shops in Street, , yielding a gross rental of £100 per annum, conform to rental annexed, and valued by A. B., builder in , as per valuation, dated at			£1200 0 0

It is stated by the bankrupt that this property is burdened with a debt, heritably secured, amounting to £700. The right of the heritable creditor to a preference has not yet been investigated.

II. Stock in Trade:—

Stationery, per inventory and valuation of , bookseller and stationer in , dated 16th December 1914 - - - - - - - - -	£580 16 8		
Books, per do. do. - - - - -	360 7 6		
Tools and other materials used in binding per do. - -	255 17 5		
			1197 1 7

Note.—Messrs. G. & H., publishers in , claim a security or lien over part of the stock. The amount of the debt in respect of which they claim this security or lien has not been ascertained. This claim is subject to inquiry.

III. Book Debts, as appearing in the bankrupt's book, viz.:—

Folios of Bankrupt's Ledger.	Considered by Trustee to be Bad.	Doubtful.	Good.	
16. John Thomson, merchant in ,	£0 0 0	£0 0 0	£75 16 8	
81. William Jones, grocer in ,	0 0 0	0 0 0	5 2 6	
7. Thomas Johnstone, bookseller -	0 0 0	3 1 2	0 0 0	
35. Andrew Smith, bookseller - -	15 0 0	0 0 0	0 0 0	
15. Thomas Brown, merchant in ,	0 0 0	0 0 0	30 2 6	
20. Thomas Thomson, bookseller in ,	0 0 0	16 8 4	0 0 0	
56. W. Anderson, grocer in - -	0 0 0	8 2 4	0 0 0	
Carry over,	£15 0 0	£27 11 10	£111 1 8	£2397 1 7

	Bad.	Doubtful.	Good.	
Brought over,	£15 0 0	£27 11 10	£111 1 8	£2897 1 7
78. Alexander Forbes, innkeeper in ,	6 8 2	0 0 0	0 0 0	
84. William M'Leod, grocer in ,	3 5 6	0 0 0	0 0 0	
Amount of debts considered good, valued at 20s. per £,			£111 1 8	
Amount of debts considered doubtful,		£27 11 10		
Value at 10s. per £1,			13 15 11	
Amount of debts considered bad and of of no value,	£24 13 8			
				124 17 7

IV. Other debts which do not appear in the bankrupt's books, but which have been ascertained by the trustee to be due, viz.:—

James Johnstone, tenant of the bankrupt's house, arrear of rent due at Whitsunday last,	£25 0 0	
Balance due to the bankrupt on a deposit-account in his name with the Bank in , as at the date of his sequestration, December 1, 1914	39 14 6	
Cash in the hands of the bankrupt's cashier,	5 0 0	
		69 14 6

V. Stock and Shares of Joint Stock Companies:—

Twenty shares in the Gas Company at £5 each, paid up, valued at £1 premium, the selling price at the date of sequestration,	120 0 0

VI. Household Furniture in the bankrupt's house, No. Street, conform to inventory and appraisement of C. D., licensed appraiser, dated 14th December 1914

	165 8 4
Amount,	£2877 2 0

(Signed) E. F., *Trustee.*

(Date)

STATEMENT of the Annual Revenue derivable from the Estate belonging to A. B., Bookseller, Stationer, and Bookbinder in C., sequestrated on 1st December 1914.

I. Gross Rental of dwelling-house and shops included in the foregoing inventory and valuation for the year now current, ending at Whitsunday 1915, and payable at Martinmas 1914 and Whitsunday 1915 in equal portions, viz.:—

Dwelling-house No. 17 of Street, Glasgow, consisting of second flat, let to James Johnstone,	£35 0 0	
Large shop, &c. let to William George, grocer,	55 0 0	
Cellar below shop occupied by John Williams,	10 0 0	
		£100 0 0

II. Revenue derivable from shares in Joint Stock Companies:—

Estimated Dividend from twenty shares of Gas Company, at 6 per cent on the paid-up capital (£5 per share), being the rate of dividend declared for previous year,	6 0 0
The other estate and effects of the bankrupt yield no revenue.	
Amount,	£106 0 0

(Signed) E. F., *Trustee.*

Observations by the Accountant.—Where separate inventories and valuations of particular portions of the estate, such as household furniture, stock in trade, &c., have been obtained, it will be sufficient, in preparing the inventory and valuation of the whole estate, if such separate valuations are referred to for the particulars embraced in them. References to subsidiary inventories and valuations should shew the name and designation of the party by whom they were made, and also their dates.

The trustee is directed "forthwith to transmit copies of such inventory and valuation to the Accountant." The copies transmitted ought to be attested by the trustee.

When the sequestration embraces the estates of a company and the estates of individual partners, it is necessary that these estates should be kept distinct in the inventory and valuation.

The inventory and valuation required, is an inventory and valuation of the whole estate and effects of the bankrupt, whether affected by special securities or burdened by the mass of his debts. It is quite proper to note, in the inventory or valuation, the securities which are known or suspected to burden particular assets. The secured debts ought not, however, to be given effect to by excluding the subjects burdened in whole or in part from the estimated amount of the estate.

It is in the trustee's report to the second meeting of creditors, under the 92nd section of the Act, that the state of the bankrupt's affairs is set forth by the trustee. In this report the trustee is required to submit an estimate of what the estate may produce. This estimate may be brought out by stating the *gross* estate as in the inventory, and deducting therefrom the secured and preferable debts, and the expenses as estimated, and bringing out the net assets available for division amongst the ordinary or unsecured creditors, at so much per £ on the amount of their debts, so far as then known to the trustee.

No. II.

FORM OF ACCOUNT-CURRENT, or Progressive State of the Trustee's Intromissions, exhibiting the balances from day to day, both on the Trustee's Account and on the Account kept by him for the Estate in Bank.

Dates.	TRUSTEE *Dr.* or *Cr.*			State of Bank Account.	State of Trustee's Account.
1914. Dec. 14.	*Dr.*	Received cash in bankrupt's desk,			£5 0 0
,,	,,	Received balance in bankrupt's deposit account			39 14 6
					£44 14 6
	Cr.	Paid into bank account,		£40 0 0	40 0 0
					£4 14 6
,, 20.	*Dr.*	Received arrears of rent due by James Johnstone,	£25 0 0		
	,,	Half-year's rent to Martinmas from do.,	17 10 0		
	,,	Do. from William George for shop,	27 10 0		
	,,	Do. from John Williams for cellar,	5 0 0		
					75 0 0
					£79 14 6
,,	*Cr.*	Paid into bank,		75 0 0	75 0 0
				£115 0 0	£4 14 6
,,	*Dr.*	Received from John Thomson debt due by him	£75 16 8		
,,	,,	Received from Wm. Jones, do.,	5 2 6		
			£80 19 2		
,,	*Cr.*	Paid interest on heritable debt,	14 0 0		
					66 19 2
					£71 13 8
,,	,,	Paid into bank,		66 0 0	66 0 0
				£181 0 0	£5 13 8
,, 31.	*Dr.*	Received proceeds of household furniture, sold by J. Williams, auctioneer,			150 8 4
					£156 2 0
	Cr.	Paid into bank,		150 8 4	150 8 4
				£331 8 4	£5 13 8
1915, Jan. 4.	*Dr.*	Received dividends on gas sharee payable at Christmas 1914	£3 0 0		
,,	,,	Price of gas shares sold,	126 0 0		
					129 0 0
					£134 13 8
,,	*Cr.*	Paid into bank,		£126 0 0	126 0 0
				£457 8 4	£8 13 8
,, 16.	*Dr.*	Received from W. Anderson amount of debt due by him,			8 2 4
					£16 16 0
,,	*Cr.*	Paid into bank,		15 0 0	15 0 0
				£472 8 4	£1 16 0
,, 30.	*Dr.*	Received per draft on bank account,		20 0 0	20 0 0
		Carry over,		£452 8 4	£21 16 0

Dates.			State of Bank Account.	State of Trustee's Account.
		Brought over,	£452 8 4	£21 16 0
1915, Jan. 30.	*Cr.*	Paid to account of allowance to bankrupt,		20 0 0
				£1 16 0
Feb. 2.	*Dr.*	Received per draft on bank account,	10 0 0	10 0 0
			£442 8 4	£11 16 0
"	*Cr.*	Paid burdens and taxes, forming charges against house rent,		9 6 0
				£2 10 0
April 1.	*Dr.*	Received per draft on bank account,	30 0 0	30 0 0
			£412 8 4	£32 10 0
"	*Cr.*	Paid balance of allowance to bankrupt, £13 12 0		
"	"	Account for law expenses as taxed, 16 12 0		30 4 0
Balance in bank at 1st April 1915, exclusive of interest from commencement of account, to be ascertained at the end of the year,			£412 8 4	
Balance in the trustee's hand at 1st April 1915				£2 6 0
Add balance in bank as above,				412 8 4
Total balance of realised funds in favour of the estate, as at 1st April 1915				£414 14 4

(Signed) E. F., *Trustee.*

EDINBURGH, 10*th April* 1915.—We, commissioners on the sequestrated estate of A. B., hereby certify that the balance due by the trustee as at 1st April 1915 amounts to £2 : 6s., that the balance in bank is £412 : 8 : 4, and that the trustee has regularly deposited the money of the estate in bank, in terms of the 78th section of the Bankruptcy (Scotland) Act, 1913.

(Signed) C. D., *Commissioner.*
" E. F., *Commissioner.*
" G. H., *Commissioner.*

No. III.

FORM OF STATE OF THE WHOLE ESTATE of the Bankrupt as at 1st April 1915.

I.—*Funds Recovered.*

1. Estate embraced in the trustee's inventory and valuation:—			
(1.) Book debts, as appearing in the bankrupt's books,			£89 1 6
Whereof given up as *good*,	£80 19 2		
" formerly considered *doubtful*, but recovered in full,	8 2 4		
As above,	£89 1 6		
(2.) Other debts ascertained by the trustee to be due, forming branch IV. of the trustee's inventory, recovered in full,		69 1	
(3.) Price of shares in Gas Company, sold for		126 0	
(4.) Proceeds of household furniture sold,		150 8 4	
		£435 4 4	
2. Estate accrued since the trustee's inventory was made up:—			
Rents of property for half-year to Martinmas 1914,	£50 0 0		
Dividend on gas shares at Christmas 1914,	3 0 0		
		53 0 0	
Amount,		£488 4 4	
NOTE.—The amount of the funds recovered is as above,			£488 4 4
Out of which the following payments have been made:—			
Allowance to bankrupt,	£33 12 0		
Interest, burdens, and taxes affecting heritable property,	23 6 0		
Law expenses,	16 12 0		
Total,		73 10 0	
Remains balance of realised funds in favour of the estate at 1st April 1915, as before,			£414 14 4

II.—*Property Outstanding* (specifying the cause why it has not been recovered).

1. Dwelling-house and shop, as given up in the trustee's inventory and valuation at - - - - - - £1200 0 0

NOTE.—This property was exposed to public sale on 15th March last, after due previous advertisement, at the above sum, but no offerer appeared. It will be again exposed for sale on the 10th current, at the reduced upset price of £1100, in terms of a resolution of the commissioners.

The trustee in the meantime retains his original valuation, - - £1200 0 0

2. Stock in trade given up in trustee's inventory at - - £1197 1 7

After some delay granted at the request of the bankrupt, in order to give him an opportunity of furnishing an adequate offer of composition, with satisfactory caution, the trustee, with advice of the commissioners, advertised this portion of the estate for sale, and it has now been sold at the price of £1030, which is payable in one sum at Whitsunday next, say - - - - 1030 0 0

3. Book debts:—

The trustee has been in correspondence with all the debtors, with the view of obtaining payment of their debts.

No portion of the debts which were given up in his inventory as *bad* has been recovered, and, in the circumstances of the debtors, the trustee does not anticipate that anything will be derived from this source.

Of the debts given up as *doubtful*, two are outstanding—

(1.) Thomas Thompson, - - - - - £16 8 4

This party has granted his bill, dated 1st March last, at four months, for the above sum.

(2.) Thomas Johnston, - - - - - 3 1 2

This debtor refuses or delays payment, without advancing any satisfactory reason, and the trustee proposes to prosecute the debtor. The trustee meanwhile repeats his valuation of the above debts at 10s. per £, - - - - £9 14 9

The only debt given up as *good*, which is now outstanding, is—

Thomas Brown, - - - - £30 2 6

The trustee expects to obtain payment of this sum in full on an early date, - - - - - 30 2 6

39 17 3

Amount of property outstanding, £2269 17 3

Note.—The amount of the estate on the footing of the inventory and valuation is £2877 2 0

The amount of funds actually recovered is, as before, - £488 4 4

The amount of the property outstanding is, as before, - 2269 17 3

2758 1 7

Difference, £119 0 5

Which has arisen thus—

The stock in trade, according to the inventory and valuation, was estimated to realise - - - £1197 1 7

It has been sold for - - - 1030 0 0

Depreciation on stock, £167 1 7

The household furniture was estimated to realise £165 8 4

The proceeds as received were - - 150 8 4

Depreciation, 15 0 0

Total depreciation, £182 1 7

On the other hand—

The gas shares realised - - - £126 0 0

While they were valued at 120 0 0

Increase, £6 0 0

The debt due by W. Anderson (£8:2:4), which was valued at 10s. per £, has been recovered in full—increase, - - - - 4 1 2

The estate accrued from rents and dividend since the trustee's inventory was made up is, as before, in No. 2 of the *Funds Recovered*, - - 53 0 0

Total increase, 63 1 2

Difference as above, £119 0 0

N.B.—It will be found, both by trustees and commissioners, beneficial to contrast periodically the results of the winding up as it progresses, with the estimate of the estate which was originally formed in the inventory and valuation. This note suggests the form in which such contrast may be readily made.

NOTES BY THE ACCOUNTANT OF COURT

FOR THE

GUIDANCE OF COMMISSIONERS IN SEQUESTRATIONS UNDER THE "BANKRUPTCY (SCOTLAND) ACT, 1913."

N.B.—These notes are generally applicable to all processes of sequestration, except that in cases of *summary* sequestration awarded and regulated by sections 174, 175, and 176 of the Act, the periods for making up accounts are not fixed by statute as in ordinary sequestration, but are left to be fixed by the commissioners themselves, separate provision being made in these sections for the audit of the accounts, the fixing of commission, and the declaration of dividends.

The duties and powers of the commissioners are thus clearly and succinctly described in the 81st section of the Bankruptcy (Scotland) Act, 1913:—

1. They shall superintend the proceedings of the trustee;*
2. Concur with him in submissions and transactions;†
3. Give their advice and assistance relative to the management of the estate;
4. Decide as to paying or postponing payment of a dividend;
5. Assemble at any time to ascertain the situation of the bankrupt estate; and
6. Any one of them may make such report as he may think proper to a general meeting of creditors.

It is enacted by the 121st section of the said Act: "Immediately on the expiration of four months from the date of the deliverance actually awarding sequestration, unless the dividend is accelerated as hereinafter provided (section 130), the trustee shall proceed to make up a state of the whole estate of the bankrupt, of the funds recovered by him, and of the property outstanding (specifying the cause why it has not been recovered), and also an account of his intromissions, and generally of his management; and within fourteen days after the expiration of the said four months, the commissioners shall meet and examine such state and account, and ascertain whether the trustee has lodged the moneys recovered by him in bank or not; and if he has failed to do so, they shall debit him with a sum at the rate of £20 per annum on every £100 not so lodged, and so after that rate on any larger or smaller sum, being not less than £50; and they shall (1) audit his accounts; and (2) settle the amount of his commission or fee; and (3) authorise him to take credit for such commission or fee in his accounts with the estate; and (4) they shall certify by a writing under their hands engrossed or copied in the sederunt book, the balance due to or by the trustee in his account with the estate as at the expiration of the said four months, and they shall declare whether any, and what part, of the net produce of the estate, after making a reasonable deduction for future contingencies, shall be divided among the creditors."

By section 121 the commissioners are required to "settle the amount" of the commission or fee, and by section 122 the trustee is required to intimate by circular to every creditor on the estate, and to the bankrupt, the deliverance of the commissioners fixing such, and a right of appeal follows thereon. The actual sum allowed, and the realisations to which it applies, should therefore be recorded in the minute and repeated in the circular.

The accountant holds that the commission for the period under review must be "settled," and that the commissioners cannot authorise the trustee to take a "payment to account," or to retain as extra commission any subsequent unapplied balance.

With reference to fixing the trustee's commission, the accountant thinks it right to draw attention to the case of *Lindsay* v. *Hendrie* (15th June 1880, 7 R. 911), on the subject of paying the trustee for his clerk's writings. The Lord President stated: "The statute has fixed that no form of remuneration shall be allowed to the trustee, except commission." Lord Shand stated: "The charge for clerk's writings in addition to commission is not sanctioned by the statute, and cannot be allowed by the trustee. In a case where an unusual amount of writing occurs, this ought to be taken into account in fixing the commission."

Provision is made in sections 127 and 129 of the Act for similar procedure at the end of eight months from the date of the deliverance actually awarding sequestration, and thereafter at intervals of three months from the close of the immediately preceding account, until the whole funds shall be divided.

The commissioners will observe that it is

* By the 78th section of the Act it is enacted: "The trustee shall manage, realise, and recover the estate belonging to the bankrupt, wherever situated, and convert the same into money, according to the directions given by the creditors at any meeting, and if no such directions are given, he shall do so with the advice of the commissioners."

† By the 172nd section of the Act, the trustee, with the consent of the commissioners, may compound, transact, or refer to arbitration any question arising regarding the estate, or any demand or claim made thereon.

thus the trustee's duty to close his accounts as follows:—

First Account, on the expiration of four months from the date of the deliverance *actually awarding* sequestration.

Second Account, on the expiration of eight months from date of awarding.

Third Account, on the expiration of eleven months from date of awarding.

Fourth Account, on the expiration of fourteen months; and each succeeding account thereafter on the expiration of three months from the date at which the preceding account was closed. The commissioners will also observe that it is their duty, within fourteen days of the period when each of these accounts is closed, to meet and examine such accounts, etc., and perform the other duties specified in the 121st section.

If the trustee fail to submit the accounts for audit at the statutory periods above mentioned, the commissioners are entitled to call on him to do so; and if he refuse or delay to answer their call, they may represent the matter to the accountant, who will give them the assistance and directions proper in the circumstances.

It is further enacted, in the event of a composition being offered, that before it is approved of, "the commissioners shall audit the accounts of the trustee, and ascertain the balance due to or by him, and fix the remuneration for his trouble, subject to the review of the Lord Ordinary or the sheriff, if complained of by the trustee, the bankrupt, or any of the creditors" (section 138 of the Act).

The commissioners are thus constituted the proper auditors of the trustee's accounts, and it is *their duty* to audit these accounts, deduct any entries to which they object, and certify the correct balance, in their opinion, by minute.

In particular, it is their duty to ascertain that the trustee has lodged the money of the estate in bank, in terms of the Act. In addition to what is provided on this subject by the 121st section of the Act, provisions applicable to the lodging of the money in bank are contained in the 78th and 79th sections. The 78th section provides that the trustee "shall lodge all money which he shall receive in the course of such management, realisation, and recovery, in such bank as the majority of the creditors in number and value at any general meeting shall appoint, and failing such appointment, in any joint-stock bank of issue in Scotland (provided that the bank be not one in which the trustee shall be an acting partner, manager, agent, or cashier); and the money shall be lodged in the name of the trustee, in his official character under this Act, and such bank shall once yearly at least balance such account." The 79th section enacts: "If the trustee shall keep in his hands any sum exceeding fifty pounds belonging to the estate, for more than ten days, he shall pay interest to the creditors at the rate of twenty pounds per centum per annum on the excess of such sum above fifty pounds, for such time as the same shall be in his hands beyond ten days; and unless the money has been so kept from innocent causes, the trustee shall be dismissed from his office, upon petition to the Lord Ordinary or sheriff by any creditor, and have no claim to remuneration, and shall be liable in expenses."

The Court of Session has found (*Freyd's Trustee*, 29th June 1864, 2 M. 1293) that the fund set apart by the commissioners for the payment of a dividend forms part of the funds of the sequestrated estate, and is subject to the provisions before quoted, as to the lodging of the money of the estate in bank. According to this decision, the trustee is not entitled to withdraw from bank the amount set apart for payment of a dividend at the time at which it is payable, but only to draw from time to time such sums as may be required to meet the payments to the creditors as they claim their dividends. If a trustee hold in his hands moneys of the estate (whether set apart for dividends or not) beyond the limit prescribed by the Act, he is liable to the penalties thereby imposed.

The accountant begs to impress upon the commissioners the necessity of their satisfying themselves at each period of audit, by examination of deposit-receipts or of bank accounts (duly certified by the bank officials), that the money is in bank, as represented in the accounts. Cases have occurred in which trustees have made false representations in their accounts regarding their bank transactions; and commissioners have, without examining these transactions and checking them with the bank vouchers, certified falsely in their docquets that the accounts were correct, and the money lodged in bank as represented. The accountant has power to submit to the Lord Advocate all such cases of misrepresentation, for the purpose of having the parties prosecuted criminally, under the provisions of the 161st section of the Act.

It is provided (section 154); "All accounts for law business incurred by the trustee shall, before payment thereof by the trustee, be submitted for taxation to the auditor of the Court of Session, or to the auditor of the Sheriff Court of the county in which the sequestration was carried on, as may be directed by a general meeting of the creditors." The commissioners ought to ascertain that all accounts for law business have been so taxed, before passing the payments thereof by the trustee, in their audit of his accounts, and they ought also to satisfy themselves that the accounts have been incurred for work which the trustee is entitled to employ a law agent to do at the expense of the estate, *e.g.* litigation, conveyancing, or for giving or procuring proper legal advice where required, and not incurred for the performance of duties which the Bankruptcy Act requires the trustee to do in virtue of his office, and for which he is remunerated by his commission. The deliverance of the commissioners on this subject may, if wrong, be corrected on appeal to the proper Court (section 165).

The Lord Ordinary on the Bills has decided (*Geddes's Trustee*, 6th April 1865) that where the law agent is one of the commissioners he is not entitled to charge more than his costs out of pocket while so acting. In the case quoted, all the professional charges of the agent while he acted as a commissioner were disallowed.

H.M. New Register House,
Edinburgh, 2nd January 1914.

J. CAMPBELL PENNEY,
Accountant of Court.

INDEX TO FORMS AND PRECEDENTS.

PAGE

1. Summons 71
2. Citation for Defender 71
3. Execution of Service 72
4. Decree 72
5. Charge 72
6. Execution of Charge 72
7. Schedule of Arrestment 73
8. Execution of Arrestment 73
9. Schedule of Poinding 74
10. Execution of Poinding 74
11. Abbreviate for the Register of Inhibitions 75
12. *Gazette* Notice of First Meeting 75
13. Affidavit and Claim 75
14. Minute of First Meeting 78
15. Bond of Caution for Trustee 80
16. Act and Warrant of Confirmation of Trustee 81
17. Offer of Composition 81
18. Abbreviate for Register of Adjudications 81
19. *Gazette* Notice of Trustee's Appointment and of Second Meeting . 81
20. Circular to Creditors intimating Trustee's Appointment . . . 81
21. Question Outline for Bankrupt's Examination 82
22. Statutory Oath by Bankrupt after Examination 82
23. Minute of Second Meeting 83
24. Report by Trustee to Second Meeting 84
25. Statement of Affairs and Deficiency Statement 85
26. Circular to Creditors intimating Composition and calling Meeting to Finally Decide 88
27. *Gazette* Notice to Same Effect 88
28. Declaration by Bankrupt following Acceptance of Offer . . . 89
29. Minute of Commissioners Auditing Accounts 89
30. Trustee's Adjudication on Claims 90
31. Lists of Admitted and Rejected Claims 92
32. Accounts.
    - (1) Inventory and Valuation 92
    - (2) Trustees' Account Current 92
    - (3) State of Funds Recovered and Outstanding 92
    - (4) Scheme of Division 92
    - (5) Account Charge and Discharge 93
33. Circular intimating Dividend 96
34. *Gazette* Notice intimating Dividend 96
35. *Gazette* Notice intimating Postponement of Dividend . . . 97
36. Circular intimating Acceleration of Dividend 97
37. *Gazette* Notice of Acceleration of Dividend 97
38. Minute of Concurrence to Bankrupt's Discharge 98
39. Certificate by Trustee that Consents Obtained 98
40. Report by Trustee to the Court 98
41. Form of Deposit-Receipt for Unclaimed Dividends 98
42. *Gazette* Notice of Trustee's Application for Discharge . . . 99
43. Circular to Creditors calling Meeting 99
44. Minute of Creditors re Trustee's Discharge 99
45. Form of Extra-judicial Trust Deed 100

FORMS AND PRECEDENTS.

1. SUMMONS IN THE SMALL DEBT COURT.[1]

, Esquire, King's Counsel, Sheriff of the Shire of , To officers of Court, and other legal executors hereof, jointly and severally: Whereas it is humbly complained to me, by

that

defender owing the complainer the sum of

which the said defender refuse or delay to pay; and therefore the said defender ought to be decerned and ordained to make payment to the complainer , with expenses: Herefore it is my will, that on sight hereof ye lawfully summon the said defender to compear before me, or my substitute, in the Court-House at , upon the day of nineteen hundred and years, at of the clock forenoon, to answer at the complainer's instance in the said matter, with certification, in case of failure, of being held as confessed; requiring you also to deliver to the defender a copy of any account pursued for; and that ye cite witnesses and havers for both parties, to compear at the said place and date, to give evidence in the said matter; and, in the meantime, that ye arrest in security the goods, effects, debts, and sums of money belonging to the defender , as accords of law.

Given under the hand of the Clerk of Court, at , the day of nineteen hundred and years.

Sheriff-Clerk Depute.

2. CITATION FOR DEFENDER.

defender , above designed, you are hereby summoned to appear and answer before the Sheriff, in the matter, and under the certification set forth in the above copy of the summons or complaint against you, at the time and place mentioned in the foregoing copy extract warrant of re-service, of date 192 . This notice,* on the day of nineteen hundred and years, by me,

Sheriff-Officer.

* "With of the ac or statem served" "posted.

[1] The forms of the Sheriff Court are similar but more elaborate.

3. EXECUTION OF SERVICE BY POST.[1]

This summons, executed by me, against
defender, by posting on between the hours of
at the Post Office, a copy of the same to
d a copy with citation subjoined,* in
account registered letter , addressed as follows, viz. :—
ement."

4. DECREE.

At , the day of nineteen hundred
and years, the Sheriff of the Shire of
finds the within designed

defender liable to the pursuer in the sum of

of expenses, and decerns and ordains instant execution by arrestment and also execution to pass hereon, by poinding and sale and imprisonment, if the same be competent, after a of ten free days.

(*Signed*) *Sheriff-Clerk Depute.*

5. CHARGE.

Above designed, you are hereby charged to implement the decree, of which and of the complaint whereon the same proceeded, the above is a copy, within ten free days from this date, under pain of poinding and sale and imprisonment, if the same be competent, without further notice.

This charge given by me, on the day of
nineteen hundred and years.

Sheriff-Officer.

6. EXECUTION OF CHARGE.

On the day of nineteen hundred and
years, I duly charged within designed, to implement the within decree, within the time and under the pains therein expressed. This I did by a just copy of the foregoing complaint and decree, and a charge thereto annexed, subscribed by me, the said .

[1] The citation may be served personally by a sheriff-officer and the wording of the certificate of execution altered accordingly.

At this point arrestment on the dependence of the action may be served.

7. SCHEDULE OF ARRESTMENT IN EXECUTION.

(*Note.*—An arrestment may be executed on the dependence of an action and an arrestment on a decree may precede the charge for payment.)

I, sheriff-officer, by virtue of an extract decree from the Sheriff Court Books for shire kept at , containing warrant to arrest, dated the day of nineteen hundred and years, raised at the instance of

in His Majesty's name and authority, and in name and authority of the Sheriff of shire, lawfully fence and arrest in the hands of you,

the sum of sterling, more or less due and addebted by you to the said

together, also, with all goods and gear, debts, sums of money, or any other effects whatever, lying in your hands, custody, or keeping, pertaining or in any manner of way belonging to the said

or to any person or persons for use and behoof, all to remain under sure fence and arrestment, at the instance of the said complainer until payment be made to the complainer of the sum of of expenses all as contained in said decree (under deduction of all partial payments, if any be).

This I do upon the day of nineteen hundred and years.

Sheriff-Officer.

8. EXECUTION OF ARRESTMENT.

Upon the day of nineteen hundred and years, by virtue of an extract decree from the Sheriff Court Books for shire, kept at , containing warrant to arrest, dated the day of nineteen hundred and years, raised at the instance of

I, sheriff-officer, passed and in His Majesty's name and authority and in name and authority of the Sheriff of shire lawfully fenced and arrested in the hands of

the sum of sterling more or less due and addebted by the said arrestee to the said defender, together also with all goods and gear, debts, sums of money, or any other effects whatever lying in the said arrestee's hands, custody, and keeping, pertaining or in any manner of way belonging to the said defender,

or to any person or persons for use or

behoof; all to remain under sure fence and arrestment at the instance of the said complainer until payment be made to the complainer of the sum of

of expenses, all as contained in said decree (under deduction of all partial payments, if any be).
This I did by a just copy of arrestment to the effect aforesaid
which copy of arrestment duly signed by me did bear the date hereof and contained the date of said extract decree.

(*Note.*—An arrestment is enforced by an action of furthcoming against the arrestee.)

9. SCHEDULE OF POINDING.

I, sheriff-officer, by virtue of an extract decree from the Sheriff Court Books for shire, containing warrant to poind, dated at , the day of one thousand nine hundred and years, bearing the defender
to have been found liable to the pursuer
in the sum of sterling with of expenses and decerning and ordaining execution to pass thereon, by poinding and sale after a of ten free days; and the said
having duly run and expired, passed with the witnesses and appraisers after-named and designed to the premises situated at
and then and there demanding payment of the sums in said decree past due, and payment not being made, I poinded the goods and effects after-mentioned belonging to the said debtor, viz.:—

all sterling money, and that toward payment of said debt and expenses, with certification.
This I do upon the day of one thousand and nine hundred and years, before and both residing in , witnesses and appraisers, present at the premises.

10. EXECUTION OF POINDING.

Upon the day of nineteen hundred and years, by virtue of an extract decree from the Sheriff Court Books for shire, containing warrant to poind, dated at , the day of nineteen hundred and years, bearing the defender
to have been found liable to the pursuer
in the sum of sterling with of expenses and decerning and ordaining execution to pass thereon, by poinding and sale after a of ten free days; and the said
having duly run and expired, I, sheriff-officer, passed with

the appraisers and witnesses after-named and designed to the premises situated at

and then and there after demanding payment of the sums in said decree past due, and payment not being made, pointed the goods and effects after-mentioned belonging to the said debtor, viz.:—

all sterling money, and towards payment of said debt and expenses, with certification.
This I did by a just schedule of poinding to the effect foresaid

before and in presence of and both residing in , appraisers and witnesses to the premises, and to whom I administered the oath *de fideli administratione officii*, and hereto with me subscribing.

Appraiser and Witness
Appraiser and Witness

(*Note.*—A poinding is enforced by a warrant of sale and a sale thereunder.)

11. ABBREVIATE FOR THE REGISTER OF INHIBITIONS.

(See B.A., Sched. A, *supra.*)

12. GAZETTE NOTICE OF FIRST MEETING.

(See B.A., Sched. B, *supra.*)

13. AFFIDAVIT AND CLAIM.

(*a*) Simple Form.

At the day of one thousand nine hundred and years,
in presence of
one of His Majesty's Justices of the Peace for the
compeared

who, being solemnly sworn and interrogated, depones that

at the date of the sequestration of estates and still justly indebted and resting owing to

the sum of
conform to account annexed, and signed by the deponent and the said Justice of the Peace as relative hereto, deponcs that no part of said sum has been paid or compensated, and that no security is held for the same, and that there are no other obligants for the debt than the said bankrupt

All which is truth, as the deponent shall answer to God.

(Deponing creditor signs here)
(Justice of the Peace signs here)

MANDATE.

(*Place and date*) 19 .

Sir,

You are hereby authorised to attend, vote, and act at all meetings under the sequestration of above designed, with the same powers as belong to,

Sir,

Your obedient servant,

(To be signed by the creditor.)

COPY ACCOUNT REFERRED TO IN PREFIXED AFFIDAVIT.

(*Debtor*)

TO

(*Creditor*)

DIRECTIONS FOR MAKING OUT ACCOUNT.

A. If the claim is wholly or partly an open account, the dates and *full invoice details* must be given, as "To goods" merely is not sufficient.

B. If constituted by bill, it must be described, and interest at 5 per cent. added or deducted between the date of sequestration and the due date of the bill.

C. All bills, receipts, or other evidence of the debt *must* be produced with this claim.

D. This account should be signed by the deponing creditor or partner and the Justice of the Peace or Magistrate.

| | | |

interrogated, depones that A. B. & Co. (*designation*), and A. B., C. D., and E. F., the partners of said firm as such partners and as individuals, were at the date of the sequestration of their estates, and still are justly indebted and resting owing to the said
the sum of sterling
conform to account herewith produced, and signed by the deponent as relative hereto, depones that no part of said sum has been paid or compensated, and that he holds no other person or obligant than the said bankrupts bound for the debt or any part thereof, save and except the dissolved firm of X. Y. & Co., and X. Y. and A. Z., the individual partners thereof, who are bound for the debt jointly and severally with the bankrupts for the portion thereof incurred prior to the dissolution of the said firm of X. Y. & Co., on , but which obligation the deponent does not require to value and deduct: and depones further that no other security is held for said debt: Further, the deponent in claiming on the estate of the said A. B. with a view to voting hereby values his claim against the estate of the said A. B. & Co. at the sum of £ sterling, and his claim against the estate of the said C. D. at the sum of £ sterling, and his claim against the said E. F. at the sum of £ sterling, which three sums, amounting together to £ sterling, being deducted from the foresaid sum of £ sterling, leave a balance of £ for which deponent claims a right to vote in all matters relating to the individual estate of the said A. B.: And in like manner the deponent in claiming on the estate of the said C. D. with a view to voting hereby values his claim against the said A. B. & Co. at the sum of £ sterling, and his claim against the estate of the said A. B. at the sum of £ sterling, and his claim against the said E. F. at the sum of £ sterling, which three sums, amounting together to £ sterling, being deducted from the foresaid sum of £ leave a balance of £ for which the deponent claims a right to vote in all matters relating to the individual estate of the said C. D.: And in like manner the deponent in claiming on the estate of the said E. F. with a view to voting hereby values his claim against the said A. B. & Co. at the sum of £ sterling, and his claim against the estate of the said A. B. at the sum of £ sterling, and his claim against the said C. D. at the sum of £ sterling, which three sums, amounting together to £ being deducted from the foresaid sum of £ leave a balance of £ for which the deponent claims a right to vote in all matters relating to the individual estate of the said E. F.

All which is truth, as the deponent shall answer to God.

J.P. John Smith.

The Justice or Magistrate signs here, adding J.P.

MANDATE.

Sir,

You are hereby authorised to attend, vote and act at all Meetings to be held in the sequestration of the above designed A. B. & Co., A. B., C. D., and E. F., *with all the powers belonging to*

Your obedient servant
JOHN SMITH.

(Statement of account to follow.)

14. MINUTE OF FIRST MEETING.

(1) WHERE THERE IS NO COMPETITION FOR THE TRUSTEESHIP.

Minute of the First General Meeting of Creditors on the sequestrated estates of B. D. [*designation as in petition for sequestration*], held within , upon the day of 19 , at o'clock noon.

In terms of the deliverance of the Lord Ordinary on the Bills [*or* of the Sheriff of the county of], dated 19 , appointing this meeting to be held at the above-mentioned time and place, for the election of a trustee or trustees in succession and commissioners on the said sequestrated estates, and for doing the other acts provided by the Bankruptcy Acts, there assembled the following creditors and mandatories for creditors, viz. :—

(1) A. B., merchant, Glasgow, who produced oath, claim, and relative vouchers for a debt due to him of £ .

(2) C. D., solicitor, Edinburgh, as mandatory for G. H. & Sons, merchants, Edinburgh, who produced an oath and account for a debt of £ , also mandate in his favour.

(3) T. S., chartered accountant, Edinburgh, as mandatory of P. M., manufacturer in Leeds, who produced an oath and relative bill for a debt of £ , also mandate in his favour.

[*And so on. It is understood to be the practice,* where there is no competition, *to insert only the three creditors who are to be elected commissioners : but it is doubtful if this practice is correct.*]

There was laid upon the table by A. C., solicitor, Edinburgh, the law agent in the sequestration, the following documents, viz. :—(1) Certified copy petition for sequestration and deliverance thereon, (2) oath and vouchers of the concurring creditor, and (3) the *London* and *Edinburgh Gazettes* containing notices of this meeting.

The creditors unanimously elected the said A. B. to be preses of the meeting, and A. F., writer in Edinburgh, to be the clerk thereof.

The preses marked the oaths and productions of the several creditors and their mandatories with his initials.

There was delivered to the clerk on behalf of the bankrupt, a state of his affairs as required by the statute [*or* No state of affairs was produced by or on behalf of the bankrupt].

The meeting unanimously elected T. S., chartered accountant, Edinburgh, to be trustee on the estate, and fixed £ as the sum for which he should find security for his intromissions and performance of his duties. The meeting also decided that A. D., merchant, Edinburgh, the cautioner proposed by the said T. S., was a sufficient cautioner.

Thereafter the creditors elected the above-named and designed A. B., C. D., and E. F. to be the commissioners on the said sequestrated estate.

[The meeting instructed the trustee to lodge the moneys of the estate in the Bank.]

[The meeting directed the accounts for law business to be submitted for taxation to the Auditor of the Court of Session [*or* to the Auditor of the Sheriff Court of , *as the creditors may think fit.*]

In witness whereof, these presents, written by the clerk in the presence of the meeting, are signed by the preses in terms of the statute.

A. B., *Preses.*

The preses begs respectfully to report the foregoing proceedings to the Sheriff of the county of , in terms of the statutes.

A. B., *Preses.*

(2) Where there is a Competition for the Trusteeship.

[*The minute is the same as number* (1) *down to the election of the trustee, and then proceeds. Bill creditors present or represented must be entered.*]

The meeting then proceeded to the election of a trustee on the said sequestrated estates of the said Company and the individual partners thereof, when the following gentlemen were proposed as candidates for the office, viz.: the said T. S., whom failing J. L., chartered accountant, Edinburgh, and the said P. R., accountant, Edinburgh, whom failing L. S., accountant, Edinburgh. No personal objections having been offered to any of the candidates, the meeting proceeded to a vote, the result of which was as follows:—

[*Or* Whereupon the said E. F. stated a personal objection to the said T. S., whom failing J. L., in respect that the said T. S. is (*here state objection*).]

The vote having been taken, the following persons voted:—

For the election of the said T. S., whom failing as aforesaid the said J. L.—

1. The said C. D., as mandatory for G. H. & Son, whose claim amounts to . . . . . £
2. The said E. P., as mandatory for G. M. & Company, whose claim amounts to . . . . .
3. The said T. S., as mandatory for P. M., whose claim amounts to . . . . . .
4. The said J. K., as mandatory for N. O., whose claim amounts to . . . . . .

[*And so on through the list of creditors.*]

In all . . . £

And the following persons voted for the election of the said P. R., whom failing the said L. S.—

1. The said P. R., as mandatory for S. T., whose claim amounts to . . . . . £
2. The said W. Y., whose claim amounts to . . .
[*And so on.*]

In all . . . £

leaving the sum of £ as an apparent majority in value in favour of the said T. S., whom failing the said J. L.

The said P. R., whom failing the said L. S., protested against the validity of the votes tendered on behalf of the said T. S., whom failing the said J. L., and claimed that he, whom failing the said L. S., had been duly elected trustee.

The said T. S., whom failing the said J. L., protested against the validity of the votes tendered on behalf of the said P. R., whom failing the said L. S., and claimed that he, whom failing the said J. L., had been duly elected trustee.

The creditors fixed £ as the sum for which the trustee shall find security for his intromissions and performance of his duties, and decided that J. B., S.S.C., Edinburgh, the cautioner proposed for the said T. S., whom failing the said J. L., and P. G., writer, Glasgow, the cautioner proposed for the said P. R., whom failing the said L. S., were sufficient cautioners for the respective candidates.

Thereafter the creditors elected C. B., merchant in Edinburgh, D. G., manufacturer, Leeds, and the said W. Y. to be the commissioners on the said sequestrated estates.

[The meeting instructed the trustee to lodge the moneys of the estate in the Bank.]

[The meeting directed the accounts for law business to be submitted for taxation to the Auditor of the Court of Session (*or* to the Auditor of the Sheriff Court of , *as the creditors may think fit*).]

In witness whereof, these minutes, written by the clerk in the presence of the meeting, are signed by the preses in terms of the statute.

A. B., *Preses.*

The preses begs respectfully to report the foregoing proceeding to the Sheriff of , in terms of the statute.

A. B., *Preses.*

15. BOND OF CAUTION FOR TRUSTEE.

(See B.A., Sched. C, *supra.*)

16. ACT AND WARRANT OF CONFIRMATION OF TRUSTEE.

(See B.A., Sched. D, *supra.*)

17. OFFER OF COMPOSITION.

[*Place and date.*]

To the Creditors on the sequestrated
estates of B. D. [*designation*].

GENTLEMEN,—I hereby make an offer of a composition on my whole debts of per £, payable in cash [*or otherwise*] within one month of the acceptance of this offer; and I agree to pay the whole expenses attending the sequestration and the remuneration of the trustee; and I propose D. M. [*designation*] as my cautioner for the said composition, expenses, and remuneration.—I am, your obedient servant,

B. D.

[*Place and date.*]

I undertake to become cautioner as above mentioned.

D. M.

18. ABBREVIATE FOR REGISTER OF ADJUDICATIONS.

(See B.A., Sched. E, *supra.*)

19. GAZETTE NOTICE OF TRUSTEE'S APPOINTMENT AND OF SECOND MEETING.

(See B.A., Sched. F, *supra.*)

20. CIRCULAR TO CREDITORS INTIMATING TRUSTEE'S APPOINTMENT, ETC.

[*Place and date.*]

SIR,—I, T. S. [*designation*], intimate that I have been elected trustee on the sequestrated estates of B. D. [*designation*]; that the Sheriff of the county of has fixed the 19 , at o'clock noon, for the examination of the bankrupt, within ; that a second meeting of the creditors will be held on the 19 , at o'clock noon, within ; and that, to entitle creditors to participate in the first dividend, their claims (if not already lodged) must be lodged on or before 19 . [*If an offer of composition has been entertained at the first meeting, the circular will continue as in No.* 26, infra.]—I am, your obedient servant, T. S.

Note.—The first deliverance is dated .

21. QUESTION OUTLINE FOR BANKRUPT'S EXAMINATION.

(*a*) When did you start business ?
How much capital had you then ?
Of what did it consist ?

(*b*) Did you subsequently make profits ? If so, how much ?
Did you otherwise add to your capital ? If so, how much, and from what source ?

(*c*) Have you since succeeded to any property ?
Have you at present any investments outwith the business ?
Is your life insured ? If so, give particulars.

(*d*) What has been the amount of your personal drawings from the business per annum ?

(*e*) What are the causes of your bankruptcy ?

(*f*) When did you first become embarrassed ?

(*g*) What books did you keep ? Are they all produced to the trustee ?
Did you take stock regularly ?
Were your books balanced, or, if not, can they be balanced ?
Did you keep any scroll books ?
Can you produce any balance sheets or trading statements ?

(*h*) Did you keep any private note-books which are not produced ?

(*i*) Did you ever destroy any books or papers ?

(*j*) With what banks have you had dealings ?
What open bank accounts have you now, and what are the balances ?
Has anyone become security for you in respect of advances ? If so, to what extent ?

(*k*) Who had control of the business cash ?

(*l*) Have you ever given away cash or other property without full value received ?
If so, give particulars ?

(*m*) Have you given any preference to any creditor. If so, give particulars and say when ?

(*n*) Have you ever been in partnership ? If so, give particulars and state whether you have any claim on partnership or liability for its debts ?

(*o*) Have you at any time become guarantor for anyone ? Did you hold any security in respect of your liability ? What is the present position ?

(*p*) Have you, or your wife, any prospect of succeeding to any property ?

(*q*) Have you made a full and fair surrender of all your property and funds of every description, and of all your books and documents ?

22. STATUTORY OATH BY BANKRUPT AFTER EXAMINATION.

(See B.A., s. 91.)

23. MINUTE OF SECOND GENERAL MEETING OF CREDITORS.

Minute of the Second General Meeting of Creditors on the Sequestrated Estates of B. D. [*designation*], held within the chambers of Messrs. L. & M., C.A. [*address*], upon the day of 19 , at o'clock noon.

In terms of an advertisement in the *Edinburgh Gazette*, and of special notices by the trustee calling this meeting of creditors in the above sequestration at the time and place above specified, there assembled the following creditors and mandatories for creditors :—

1. A. B. [*designation*], as mandatory for C. M. [*designation*], for whom there had been lodged at the first meeting of creditors oath and claim for a debt of £ , also mandate in his favour.

2. E. F. [*designation*], as mandatory for G. H. [*designation*], for whom he produced oath, claim, and voucher for a debt of £ , also mandate in his favour.

3. I. J. [*designation*], a creditor claiming to rank on said sequestrated estate, who produced oath, claim, and voucher for a debt of £ .

Attending the trustee and , solicitor, law agent in the sequestration.

The trustee laid on the table a copy of the *Edinburgh Gazette* containing the advertisement calling this meeting.

The creditors thereupon elected the said A. B. preses of the meeting, and W. G., writer, as the clerk.

The trustee exhibited a report of the bankrupt's affairs, and gave all explanations relative thereto.

The trustee further reported [*state any further matters disposed of*, e.g. that he had advertised the business for sale but had received no offers, and the meeting instructed him to dispose of the stock on the best terms he could obtain, and close the premises if he could not get them taken off his hands].

The meeting also instructed the trustee to expose the heritable property for sale by public roup on the 19 at the upset price of £ , and in the event of it not being then disposed of, to re-expose it at such upset price or prices and at such time or times as the commissioners may fix.

The trustee submitted the account current of the judicial factor's intromissions, together with the vouchers thereof, which account the meeting examined, audited, and approved of. The meeting fixed the judicial factor's fee for preparing the state of affairs, and for his whole trouble, at the sum of £ .

In witness whereof, these minutes, written by the clerk in the presence of the meeting, are signed by the preses.

A. B., *Preses.*

24. REPORT BY TRUSTEE TO SECOND MEETING.

Report by T. S. [*designation*], Trustee on the Sequestrated Estates of B. D. & Company [*designation*], and B. D., sole partner of said firm, to the Second General Meeting of Creditors, held within the chambers of on the day of at o'clock noon.

On obtaining confirmation of his appointment, the trustee took possession of the property of the bankrupt and the books and documents belonging to the estate. He presented a petition to the Sheriff for the bankrupt's examination, and his Lordship appointed the day of last for that purpose. The record of the examination of the bankrupt [and others] will be found in the Sederunt Book.

The trustee has made a careful investigation of the whole of the bankrupt's affairs, and has taken such steps as appeared to him necessary for the protection of the interests of the creditors.

He submits herewith a state of affairs made up by him, from which it appears that the assets are . . . . . £
and the liabilities . . . . . .

Deficiency . . . £

showing, exclusive of expenses of sequestration, per £.

The trustee has kept the business going, and has ordered such goods as he found were required for the purpose of the business. He has advertised the business as a going concern for some time back, but has not received any offer. He now proposes to dispose of the stock on the best terms he can obtain, and close up the premises if he cannot get them taken off his hands.

Reported by

T. S., *Trustee.*

[*Place and date.*]

25. FORM OF STATEMENT OF AFFAIRS OF BANKRUPT FIRM AND PARTNERS, AND DEFICIENCY ACCOUNT.

ILLUSTRATING, INTER ALIA, METHOD OF DEALING WITH

(a) *Collaterally Secured Debts*

AND

(b) *Claim against Cautioner holding Security in terms of Section* 61 *of Bankruptcy (Scotland) Act,* 1913.

SCOTT, BROWN & CO.

STATEMENT OF AFFAIRS *as at* 31*st March* 1921.

Liabilities.		
I. *Secured Debts.*		
Rent deducted per Branch II. *contra*		£100
X. Y. & Co., deducted per Branch II. *contra*		500
G. H. & Co. do.		35
		£635
II. *Collaterally Secured Debts.*		
(1) Bank of Scotland overdraft Secured by transfer of shares in the X. Patents Co., Ltd., valued at £240 and belonging to bankrupt, John Brown.		£600
(2) Cautionary obligation by Mr James Brown, father of bankrupt, John Brown	£100	
III. *Preferable Debts.*		
Workmen	£24	
Clerk to extent of	50	
Deducted *per contra*	£74	
IV. *Ordinary Debts.*		
Trade creditors, as scheduled	£4100	
Clerk, balance of wages	20	
		4120
V. *Contingent Debts.*		
(1) T. Smith: Rent for period of lease still to run, 4 years at £90	£360	
Expected to rank for not more than 1 year		90
(2) Bills receivable discounted, not expected to rank	£350	
		£4810

Book Value.	*Assets.*		
	I. *Book Debts* as scheduled.		
£1034	Good		£1034
580	Doubtful	£580	
	Valued at 10s. per £		290
400	Bad	£400	
			£1324
	II. *Stock in Trade.*		
	(*a*) In bankrupts' premises		£1465
	less: Rent for current half-year secured to T. Smith, landlord, under hypothec		100
			£1365
	(*b*) In hands of X. Y. & Co. to order of the bankrupt	£500	
	Held against price	500	
	(*c*) In hands of G. H. & Co.	£130	
	less: Storekeeper's dues	35	
			95
1460			1460
754	III. *Horses, Vans, etc.,* as per valuation		250
£4228			£3034
1194	(Loss on realisation.)		
	Deduct: Preferable debts *per contra*		74
£3034			£2960
	IV. *Deficiency*		1850
			£4810

Showing an estimated dividend of 12s. 3¾d. per £ approximately, subject to realisation and expenses.

SCOTT, BROWN & CO.

DEFICIENCY ACCOUNT *as at* 31*st March* 1921.

Dr.			*Cr.*	
To Personal drawings—			By capital at 1st April 1919	£1000
John Brown	£600		„ Profit for year to 31st March 1920	200
Chas. Scott	456		„ Deficiency as per Statement of Affairs	1850
		£1056		
„ Trade loss—				
For year to 31st March 1921		800		
„ Bad debts		690		
„ Loss on realisation of horses and vans		504		
		£3050		£3050

CHARLES SCOTT.

STATEMENT OF AFFAIRS *as at* 31*st March* 1921.

Liabilities.			*Assets.*		
I. *Secured Debt.*			I. *Household Furniture*	£195	
Rent of house for current half-year, deducted per Branch I. *contra*		£25	*less:* Rent of house for current half-year secured by hypothec	25	£170
II. *Ordinary Debts.*			II. *Life Policy*	£200	
Private creditors—			Surrender value	£50	
Clydesdale Bank overdraft	£100		Secured to bankrupt's wife under Married Women's Policies of Assurance.		
Secured by cautionary obligation of Thomas Martin who holds in security from the bankrupt investment valued at £50 as against his guarantee (see Branch III. *contra*).			III. *Investment*	£50	
Sundry creditors	50		Claim on Thomas Martin cautioner (see Branch II. *contra*) in terms of section 61 of Bankruptcy Act, 1913, to make dividend up to 1s. 9d. per £		5
		150			£175
Firms' creditors (including Bank of Scotland).			IV. *Deficiency*		1830
Deficiency thereon		1850			£2000
		£2000			

Showing an estimated dividend of 1s. 9d. per £, subject to realisation and expenses.

(*Note.*—Re *calculation of sum recoverable from cautioner:*

The dividend, if cautioner had paid the debt and ranked for same less security (*i.e.* for £100 − £50), would have been £$\frac{170}{2000-50}$ = 1s. 9d. per £ approximately. To make dividend actually shown by the estate on liabilities of £2000 1s. 9d. per £1 an addition of £5 is necessary, and this sum is recovered from Thomas Martin.)

For alteration on above if creditor adopts alternative course set out on p. 87, see footnote to that page.

JOHN BROWN.

STATEMENT OF AFFAIRS *as at* 31*st March* 1921.

(Assuming that the shares in the X. Patents Co., Ltd., are not immediately realisable and that the bank consequently draws the dividend from Charles Scott's estate and takes payment of the ultimate deficiency from the security.)

Liabilities.		
I. *Secured Debts.*		
Bond and interest deducted per Branch II. *contra*		£612
Bank of Scotland, deducted per Branch III. *contra*		211
		£823
II. *Ordinary Debts.*		
Private creditors		£200
Firm's creditors, deficiency	£1850	
less : Deficiency on Bank of Scotland overdraft fully paid per Branch III. *contra*	231	
		1619
III. *Postponed Debt.*		
Mrs John Brown—Loan	£500	
		£1819

Assets.		
I. *Household Furniture*		£250
II. *Dwelling House*	£1050	
less : Bond £600		
Interest for half-year 12		
	612	
Reversion		438
III. *X. Patents Co., Ltd.*		
Shares valued at	£240	
deduct : Claim by Bank of Scotland for overdraft. £600		
less : Paid by firm 369		
Deficiency £231		
less : Paid by Chas. Scott's estate, 1s. 9d. per £1 20		
	211	
Reversion		29
		£717
IV. *Deficiency*		1102
		£1819

Showing an estimated dividend of 7s. 10½d. per £1 approximately, subject to realisation and expenses.

ALTERNATIVE.

JOHN BROWN.

STATEMENT OF AFFAIRS *as at* 31*st March* 1921.

(Assuming that the bank operates full payment out of the security and that the trustee on this estate claims in relief on the co-partner's estate.)

Liabilities.		
I. *Secured Debts.*		
Bond and interest deducted per Branch II. *contra*		£612
Bank of Scotland, deducted per Branch III. *contra*		231
		£843
II. *Ordinary Debts.*		
Private creditors		£200
Firm's creditors	£1850	
less : Deficiency on Bank of Scotland overdraft fully paid per Branch III. *contra*	231	
		1619
III. *Postponed Debt.*		
Mrs John Brown—Loan	£500	
		£1819

Assets.		
I. *Household Furniture*		£250
II. *Dwelling-House*	£1050	
deduct : Bond £600		
Interest for half-year 12		
	612	
		438
III. *X. Patents Co., Ltd.*		
Shares valued at	£240	
deduct : Claim by Bank of Scotland for overdraft. £600		
less : Paid by firm 369		
Deficiency £231		
Reversion		9
IV. *Charles Scott's Estate.*		
Estimated dividend on ranking in relief by trustee for £115 (*i.e.* half of £231), at 1s. 10½d. per £		10
		£707
V. *Deficiency.*		1112
		£1819

Showing an estimated dividend of 7s. 9½d. per £ approximately, subject to realisation and expenses.

Note.—Owing to the ranking on Charles Scott's estate in respect of the Bank of Scotland overdraft being reduced from £231 to one-half thereof as above, the dividend on that estate is increased to say £$\frac{170}{2000-116-50}$=1s. 10½d. per £ approximately, as compared with 1s. 9d. per £ shown in note to opposite page.

26. CIRCULAR BY THE TRUSTEE INTIMATING OFFER OF COMPOSITION, AND CALLING MEETING OF CREDITORS.

[*Place and date.*]

SIR,—As trustee on the sequestrated estate of B. D. [*designation as in bankruptcy proceedings*], I hereby intimate that at a general meeting of his creditors, held on the day of 19 , at o'clock noon, the bankrupt made the following offer of composition to his creditors, viz. :—

[*Place and date.*]

To the Creditors on the Sequestrated
Estate of B. D. [*designation*].

GENTLEMEN,—I hereby make offer of a composition on my whole debts of per £, payable in cash [*or otherwise*] within one month of the acceptance of this offer ; and I agree to pay the whole expenses attending the sequestration and the remuneration to the trustee ; and I propose C. D. [*designation*] as my cautioner for the said composition, expenses, and remuneration.—I am, your obedient servant, B. D.

[*Place and date.*]

I undertake to become cautioner as above mentioned.

C. D.

The creditors present at said meeting having unanimously [*or* A majority in number and three-fourths in value of the creditors present at said meeting having] resolved that the offer and security should be entertained for consideration, another meeting of creditors will be held within the office of E. F. & Company [*address*], on the the day of , at o'clock noon, for the purpose of finally deciding thereon. In terms of sec. 134 of the Bankruptcy (Scotland) Act, 1913, I annex an abstract of the state of affairs and valuation of the estate, so far as can be done, to enable the creditors to judge of said offer.—Your obedient servant,

T. S., *Trustee.*

STATE OF AFFAIRS REFERRED TO.

[*Specify shortly state of bankrupt's affairs, bringing out deficiency.*]

27. GAZETTE NOTICE WHERE OFFER OF COMPOSITION MADE AT SECOND GENERAL MEETING.

The form can be altered to suit the case of the offer having been made at a subsequent meeting.

As trustee on the sequestrated estates of B. D. [*designation as in bankruptcy proceedings*], I. T. S., hereby intimate that at the second general meeting of creditors, held on 19 , the bankrupt made an offer of a composition of per £ to his creditors on his whole

debts, payable , and he offered C. D. [*designation*] as his cautioner. The bankrupt also offered to pay or provide for the whole expenses attending the sequestration and the remuneration to the trustee. The creditors present at said meeting resolved that the offer and security should be entertained for consideration. Another meeting of creditors will be held within the chambers of the trustee , Glasgow, on the day of 19 , at o'clock noon, for the purpose of finally deciding thereon.

T. S., *Trustee.*

[*Date.*]

28. DECLARATION BY BANKRUPT.

At , the day of 19 , in presence of G. H., Esquire, Advocate, Sheriff-Substitute of , appeared B. D., the bankrupt, who declares: I have made a full and fair surrender of my estates, and I have not granted nor promised any preference or security, nor made nor promised any payment, nor entered into any secret or collusive agreement or transaction to obtain the concurrence of any of my creditors to the offer of composition made by me to them or to the security for the same. All which I declare to be truth. B. D.

G. H.

29. MINUTE OF COMMISSIONERS AUDITING ACCOUNTS, ETC.

Minute of Meeting of the Commissioners on the Sequestrated Estates of B. D. [*designation*], held at on 19 .

Present—The Trustee and the Commissioners subscribing.

The trustee having laid before the meeting an account of his intromissions with the funds of the estate brought down to 19 , and a state of the funds recovered and outstanding at the same date, the commissioners proceeded to examine said account and compare the same with the vouchers applicable thereto, and found the same correct, and certified by a writing under their hands in the sederunt book the balance due by the trustee.

The commissioners ascertained that the trustee had duly lodged the moneys recovered by him in bank in terms of the statute.

The commissioners fixed the trustee's commission at five per cent. upon the gross sums (£) realised by him during the period under audit, being £ , and authorised him to take credit for such commission in his account with the estate.

Lastly, the commissioners declared that the sum of £ shall be divided among the creditors, in terms of the statute.

A. G., *Commissioner.*

L. M., *Commissioner.*

Where the dividend is to be postponed, substitute the following for the last paragraph in the preceding minute:

The commissioners postponed the declaration of a dividend until the recurrence of another statutory period, and dispensed with circulars to the creditors.

30. TRUSTEE'S ADJUDICATION UPON CLAIMS.

X. Y.'s Sequestration.

Adjudication upon claims lodged by creditors on the sequestrated estate of X. Y. on or before 1st September 1920, being two months prior to the time for payment of the first dividend :—

1. Charles Thomson, merchant, Inverness :—

(*a*) Account current between the claimant and the bankrupt from 1st January to 1st May 1920, showing a balance due to the claimant at the latter date of £37, 9s. 8d.

(*b*) Oath of verity by the claimant, dated .

There is an account standing against the claimant in the books of the bankrupt for £18, 11s. 3d., which falls to be deducted from the amount of the claim. The trustee, therefore, admits this claim to an ordinary ranking for the sum of £18, 18s. 5d., and *quoad ultra* rejects same.

[*Date*] . [*Trustee's signature*] .

2. James Hunter, Dundee.

(*a*) Acceptance granted by the bankrupt, dated , due on 1st July 1920, for the sum of £200.

(*b*) Oath of verity by the claimant, dated , deponing that he holds no security for the bill except fifty quarters of oats.

The claimant having been called upon in terms of sec. 61 of the Bankruptcy Act, 1913, to put a value upon the above security, and having valued same at £50, and the trustee and commissioners having considered such valuation fair and reasonable, the trustee reserves to the claimant the benefit of such security.

The trustee therefore admits this claim to an ordinary ranking as follows :—

Principal sum in bill	£200	0	0	
Deduct interest thereon from date of sequestration to due date . .	2	0	0	
	£198	0	0	
Deduct value of security as above . .	50	0	0	
Sum to be ranked . .				£148 0 0

[*Date*] . [*Trustee's signature*] .

3. British Linen Company Bank.

(*a*) Account current between the claimant and the bankrupt showing a balance due by the bankrupt, with interest to date of sequestration, of £320.

(*b*) Acceptance by the bankrupt to A. B., at four months' date from 1st January 1920, for the sum of £250.

(*c*) Acceptance by John Jones and the bankrupt to Robert Adams at three months' date from 1st February 1920 for the sum of £500.

(*d*) Cash credit between the claimant and Robert Ironside, who has been sequestrated, for which the bankrupt is a co-obligant, showing a balance of £343.

(*e*) Oath of verity by , manager of the British Linen Company Bank, dated .

Before drawing a dividend the claimants are required to state what sums, if any, they have received, or may receive, from any of the parties to the above-mentioned bills, or from Robert Ironside, the principal debtor under the cash credit above mentioned. Subject to the effect which the information required may have upon the claimant's right to draw a dividend, the trustee admits this claim to an ordinary ranking as follows :—

Balance due on account current			£320 0 0
Principal sum in acceptance to A. B. .	£250 0 0		
Deduct interest for three days . .	0 2 0		
		249	18 0
Principal sum in acceptance to Robert Adams	£500 0 0		
Deduct three days' interest . . .	0 5 0		
		499	15 0
Balance due on cash credit to Robert Ironside		343	0 0
Sum to be ranked		£1412	13 0

[*Date*] . [*Trustee's signature*] .

4. Dounside Heritable Property Company.

(*a*) Bond and disposition in security over subjects at , the property of the bankrupt, for the sum of £2000.

(*b*) Oath of verity by the claimant, deponing that he holds no security for this advance save the heritable property above mentioned.

The claimant having been called upon in terms of sec. 61 of the Bankruptcy Act, 1913, to put a value upon the above security, and having valued same at £1950, and the trustee and commissioners having considered such valuation fair and reasonable, the trustee reserves to the claimant the benefit of such security. The trustee, therefore, admits this claim to an ordinary ranking as follows :—

Principal sum in bond . . .	£2000 0 0	
Interest thereon to date of sequestration	100 0 0	
	£2100 0 0	
Deduct value of security as above .	1950 0 0	
Sum to be ranked		£150 0 0

[*Date*] . [*Trustee's signature*] .

31. LISTS OF ADMITTED AND REJECTED CLAIMS.

List of creditors on the sequestrated estate of B. D. [*designation*], whose claims have been admitted by the trustee under the qualifications stated in the foregoing deliverances.

Name of Creditor.	Ordinary.	Preferable.	Contingent.
Here give full list of creditors, with their addresses, whose claims have not been rejected, and state in one or other of the columns the amount of their claim, according as it is ordinary, preferable, or contingent.			

A. B., *Trustee.*

[*Place and date.*]

List of creditors whose claims have been rejected in whole or in part.

Name of Creditor.	Ordinary.	Preferable.	Contingent.
Here give full name and designation of creditor, and state in other columns where claims are ordinary, preferable, or contingent.			

A. B., *Trustee.*

[*Place and date.*]

32. ACCOUNTS.

(1) Inventory and Valuation.

(2) Trustee's Account Current.

(3) State of Funds Recovered and Outstanding.

Authoritative forms for these will be found as an appendix to the Notes by the Accountant of Court for the Guidance of Trustees (*supra*, p. 64).

(4) Scheme of Division.

Sections 125, 127, *and* 129 *of the* 1913 *Act require the trustee to prepare a scheme of division of the fund directed by the commissioners to be divided before the expiry of six months from the award of sequestration; and similar schemes within ten months from the award, and on the occasion of every subsequent dividend.*

Scheme of Division of the Estates of B. D. [*designation*], as at

Dividend on the Sequestrated 19 .

	Claims Admitted.	Dividend 5s.	Claims Appealed.	Dividend 5s.
	£ s. d.	£ s. d.	£ s. d.	£ s. d.
1. Allan & Son, merchants, London .	304 0 0	76 0 0	..	..
2. R. Duncan, printer, Glasgow .	50 5 0	12 11 3	..	..
3. W. Fairley, merchant, Leeds . .	206 14 6	51 13 7½	..	..
4. Ferrier & Son, grocers, Edinburgh .	32 6 0	8 1 6	..	..
5. K. George, merchant, Aberdeen .	..	..	184 8 0	46 2 0
6. W. Hart, merchant, Belfast . .	415 10 0	103 17 6	..	..
7. A. Innes, agent, Edinburgh . .	74 6 8	18 11 8	..	..
8. J. Macpherson, merchant, Aberdeen	233 4 8	58 6 2	..	..
9. M. Morrison, merchant, Inverness .	..	..	97 15 0	24 8 9
10. W. Nicolson, merchant, Glasgow .	572 12 0	143 3 0	..	..
11. F. Paterson, merchant, Galashiels .	95 14 0	23 18 6	..	..
12. Royal Bank of Scotland, Edinburgh	621 17 8	156 9 5	..	..
13. T. Thomson, butcher, Edinburgh .	17 4 0	4 6 0	..	..
14. R. Wilson & Co., drapers, Edinburgh	12 14 0	3 3 6	..	..
	2636 8 6	660 2 1½	282 3 0	70 10 9

(5) Account of Charge and Discharge.

Account Charge and Discharge of the Intromissions of T. S. [*designation*], Trustee on the Sequestrated Estate of B. D. [*designation*], from 19 to 19 .

Charge.

I. Cash in the Bankrupt's hands.

[*Date.*] Received from bankrupt, cash in his hands at the date of sequestration . . . £1 10 0

II. Rents.

[*Date.*] J. Scott, half-year's rent of house, No. Street, due at 19 . 42 10 0

III. Proceeds of Heritable Property.

[*Date.*] R. Anderson, price of the house, No. Street, sold by public roup on the 19 . . £1205 0 0

Less law expenses . . . 20 14 0

1184 6 0

IV. Proceeds of Goods.

[*Date.*] J. Wilson, for stock in shop No. taken over by him at valuation £431 14 8

Carry forward . £431 14 8 £1228 6 0

		Brought forward .			£431	14	8	£1228 6 0
	[*Date.*]	W. Jones, auctioneer, prices realised for goods sold by him per roup roll, less expenses .			223	14	3	
								655 8 11
V.	Proceeds of Shares in Public Companies.							
	[*Date.*]	R. Smith, price of £100 stock of the Royal Bank of Scotland, sold to him, less expenses			£240	0	0	
	,,	John Thomson & Co., price of 20 shares of the Greenland Land and Cattle Company, less expenses . . .			40	0	0	
								280 0 0
VI.	Book Debts (as detailed in Appendix).							
		Total amount as per ledger .			£325	12	5	
		Discounts and allowances . .	£20	0 0				
		Written off as irrecoverable .	58	10 0				
					78	10	0	
		Amount recovered						247 2 5
VII.	Furniture.							
	[*Date.*]	W. Jones, auctioneer, sum realised for the household furniture per roup roll, less commission and expenses . .			£203	4	6	
	,,	Do. do. of counting-house furniture, do. . . .			20	14	0	
								223 18 6
		Sum of the Charge . . .						£2634 15 10

DISCHARGE.

I.	Preferable Debts.							
	[*Date.*]	Mackay & Hill, warehouse rent of goods			£4	14	6	
	,,	Rent of house, No. Street, occupied by bankrupt, for half-year ending Whitsunday 19 . . . . *Note.*—The house has been sublet.			32	10	0	
	,,	Servants' wages for months			6	10	0	
	,,	Assessed taxes on house, viz. [*details*]			3	4	10	
		Carry forward .			£46	19	4	

	Brought forward .			£46	19	4	
[*Date.*]	Rent of shop No. , to Whitsunday 19 . .			15	0	0	
,,	Assessed taxes on do. . .			1	0	8	
,,	Thos. Jameson, sum contained in his bond secured over the property . .	£800	0 0				
	Interest thereon for half-year to Whitsunday 19 , at 4 per cent., less tax .	15	0 0				
				815	0	0	
							£878 0 0
II.	Aliment to Bankrupt.						
	Allowance of four months' aliment, as authorised by the general meeting of creditors of last, at £1, 5s. per week,—						
[*Date.*]	Paid him of this date . .			£10	0	0	
,,	Paid him of this date . .			10	0	0	
							20 0 0
III.	Allowance to Judicial Factor.						
[*Date.*]	Paid the sum allowed by the creditors for his trouble as judicial factor, per minute of ulto. .						10 10 0
IV.	Cash Lodged with the Bank of Scotland.						
[*Date.*]	Of this date			£50	0	0	
,,	,, ...			144	6	8	
,,	,, ...			612	10	0	
,,	,, ...			210	0	0	
,,	,, ...			118	4	6	
,,	,, ...			283	0	0	
,,	,, ...			173	8	4	
							1591 9 6
V.	General Expense and Law Charges.						
[*Date.*]	Fee for valuation of furniture .			£2	2	0	
,,	Fee for valuing house . .			3	3	0	
,,	Sellers' proportion of the expense of disposition of the property .			7	10	0	
,,	Law agent's account up to 1st current			42	10	6	
,,	Postages, stamps, and incidents, to this date			1	10	0	
							56 15 6
	Sum of the Discharge . . .						£2556 15 0

ABSTRACT.

Sum of the Charge	£2634 15 10
Sum of the Discharge	2556 15 0
Balance due by the trustee, as at 19 .	£78 0 10

Edinburgh, 19 .—We, commissioners on the sequestrated estate of B. D. [*designation*], have this day examined the foregoing account, as directed by the statute; and, having compared the same with the vouchers thereof, we find it to be correct; and that there arises a balance due by the trustee of sterling; and we find that the trustee has regularly deposited in bank the moneys received by him, as directed by the Act of Parliament.

Commr.

Commr.

33. CIRCULAR INTIMATING DIVIDEND.

[*Place and date.*]

SIR,—As trustee on the sequestrated estates of B. D. [*designation*], I hereby intimate that the accounts of my intromissions to 19 have been examined and audited by the commissioners, and found to be correct.

The commissioners have fixed my commission from the date of sequestration [*or otherwise as the case may be*], viz. 19 to 19 , at £ .

The commissioners have declared a first and final dividend [*or otherwise as the case may be*], payable within my chambers , on and after , to those creditors whose claims have been admitted.

The amount of your claim which has been admitted is £ , and the proposed dividend thereon is [*or* the amount of your claim which has been rejected is £].

I annex copy of my deliverance upon your claim.—I am, your obedient servant,

T. S., *Trustee.*

COPY OF TRUSTEE'S DELIVERANCE.

The trustee admits the claim, and ranks the claimants as ordinary creditors for £ [*or otherwise as the case may be*].

34. GAZETTE NOTICE INTIMATING PAYMENT OF DIVIDEND.

Sequestration of B. D. [*designation*].

The trustee hereby intimates that an account of his intromissions with the funds of the estate, brought down to 19 , has been audited by the commissioners, and that a first and final dividend [*or* an

equalising and third and final dividend, *or otherwise as the case may be*] will be paid upon 19 , within his chambers, No. Street , to those creditors whose claims have been lodged and admitted.

T. S., *Trustee.*

[*Place and date.*]

35. GAZETTE NOTICE INTIMATING POSTPONEMENT OF DIVIDEND.

Sequestration of B. D. [*designation*].

The trustee hereby intimates that an account of his intromissions with the funds of the estate, brought down to 19 , has been made up by him, and examined and audited by the commissioners, who have postponed the declaration of a dividend until the recurrence of another statutory period, and dispensed with circulars to creditors.

T. S., *Trustee.*

[*Place and date.*]

36. CIRCULAR BY TRUSTEE INTIMATING ACCELERATION OF DIVIDEND.

[*Place and date.*]

GENTLEMEN,—As trustee on the sequestrated estates of B. D. [*designation*], I beg to intimate that with the consent of the Accountant of Court the commissioners and I have accelerated payment of the first dividend, by authorising the same to be made on the expiration of four months from the date of sequestration, and that accordingly the affidavits (proofs of debt) must be duly lodged with me on or before the day of 19 , in order to participate in said dividend.

No creditor can receive a dividend unless an affidavit is lodged.

Creditors who have already lodged an affidavit do not require to lodge another.—I am, your obedient servant,

T. S., *Trustee.*

37. GAZETTE NOTICE OF ACCELERATION OF DIVIDEND.

To the Creditors on the Sequestrated Estates of B. D. [*designation.*]

T. S. [*designation*], trustee, hereby intimates that he and the Commissioners, with the consent of the Accountant of Court, have accelerated payment of the first dividend under this sequestration, by authorising the same to be made on the expiration of four months from the date of the deliverance actually awarding sequestration, and that accordingly the claims of the creditors must be duly lodged with the subscriber on or before the day of , in order to participate in said dividend.

T. S., *Trustee.*

[*Place and date.*]

38. MINUTE OF CONCURRENCE BY CREDITORS TO PETITION FOR BANKRUPT'S DISCHARGE.

[*Place and date*]. We, the subscribers hereto, creditors or mandatories for creditors on the sequestrated estates of B. D. [*designation*], having seen the report by T. S., trustee on said sequestrated estates, dated 19 , on the conduct of the bankrupt, hereby concur in a petition to be presented by the said B. D. to the Lord Ordinary [*or* to the Sheriff of] to be finally discharged of all debts contracted by him before the date of the said sequestration, in terms of and under the provisions of the Bankruptcy (Scotland) Act, 1913.

[*To be signed by creditors or mandatories for creditors.*]

39. CERTIFICATE BY TRUSTEE THAT NECESSARY CONSENTS OBTAINED.

I, T. S. [*designation*], trustee on the sequestrated estates of B. D. [*designation*], hereby certify that the foregoing minute of concurrence has been signed by or on behalf of the whole [*or* a majority in number and more than four-fifths in value, *or otherwise as the case may be, according to the stage at which the petition is presented*] of the creditors who have produced oaths and claims to be ranked on the said sequestrated estates.

T. S., *Trustee.*

[*Place and date.*]

40. REPORT BY TRUSTEE TO THE COURT.

Report by T. S. [*designation*], Trustee on the Sequestrated Estates of B. D. [*designation*].

The trustee has to report, in terms of the 143rd section of the Bankruptcy (Scotland) Act, 1913, that the said B. D. has complied with all the provisions of the statute; that he has made a satisfactory discovery and surrender of his estates; that he has attended the diets of examination, and has not been guilty of any collusion; and that the bankruptcy has arisen from innocent misfortunes [*or otherwise as the case may be*], and not from any culpable or undue conduct.

T. S., *Trustee.*

[*Place and date.*]

41. FORM OF DEPOSIT-RECEIPT FOR UNCLAIMED DIVIDENDS.

(See Accountant of Court's Notes, *supra*, p. *61.*)

42. GAZETTE NOTICE OF TRUSTEE'S APPLICATION FOR DISCHARGE.

As trustee on the sequestrated estate of B. D. [*designation as in bankruptcy proceedings*], I hereby call a meeting of the creditors in the sequestration, to be held within the chambers of [*address*], on the day of 19 , at o'clock noon, to consider as to application to be made for my discharge as trustee.

T. S., *Trustee.*

[*Date.*]

43. CIRCULAR TO CREDITORS CALLING MEETING.

[*Place and date.*]

To A. B. [*designation*].

SIR,—

B. D.'s Sequestration.

I hereby call a meeting of the creditors on the sequestrated estates of B. D. [*designation*], to be held on the day of 19 , at o'clock noon, within my chambers , to consider an application to be made for my discharge as trustee.—Your obedient servant,

T. S., *Trustee.*

44. MINUTE OF MEETING OF CREDITORS.

Minute of Meeting of Creditors on the Sequestrated Estates of B. D. [*designation*], held within the chambers of , at , on the day of at o'clock noon, for the purpose of considering as to an application to be made for the trustee's discharge.

Present—

[*Here give sederunt as in previous minutes.*]

The meeting elected the said A. B. to be preses and E. F. to be clerk.

The trustee appeared, and laid on the table a copy of the *Edinburgh Gazette*, containing a notice calling this meeting, and also produced a certificate that letters had been posted to every creditor who had produced an oath in the sequestration, intimating the present meeting.

The trustee laid before the creditors the sederunt book and his accounts, with a list of unclaimed dividends. [*If the dividends have all been claimed, the fact should be stated.*] The creditors expressed themselves as satisfied with the trustee's conduct and with his management of the estate, and authorised him to apply for his discharge.

In witness whereof, this minute, written by the clerk in the presence of the meeting, is signed by the preses to authenticate the same.

A. B., *Preses.*

NOTE.—*Where no creditors attend, substitute for foregoing minute, after the words "application to be made for the trustee's discharge," the following certificate by trustee :—*

I hereby certify that I convened a meeting of the creditors, by an advertisement in the *Edinburgh Gazette*, and by special notices to the creditors, to be held at the above time and place, and for the purposes above specified, and that I attended thereat, but no creditor appeared.

T. S., *Trustee.*

[*Place and date.*]

45. FORM OF EXTRA-JUDICIAL TRUST DEED.

Considering that affairs have become embarrassed, and that unable to pay the several debts due by , in consequence of which have resolved to grant a trust disposition and assignation for behoof of creditors, as underwritten : Therefore do hereby dispone, assign, convey, and make over to

(hereinafter called the said trustee) as trustee, and in trust for the purposes after specified and to his assignees, all and sundry the whole means, estates, and effects, heritable and moveable, real and personal, of whatsoever kind or nature, and wheresoever situated, now pertaining and belonging or due and indebted to , or that shall pertain and belong to during the subsistence of this trust ; together with the whole writs, titles, vouchers, and instructions thereof and all action and execution that has followed or is competent to follow thereon ; and bind , when required by the said trustee, to grant in his favour such special conveyances of said estates and effects as he may consider necessary for more fully vesting the said estates in his person, and also to concur in granting conveyances in favour of purchasers of any parts of such estates and effects ; Surrogating hereby and substituting the said

as trustee foresaid in full right and place in the premises,—With full power to him to take immediate possession of the whole of said estates and effects, and without any further advice of or creditors, to sell the same by public or private sale in whole or in lots, and on such conditions, and at such prices, as he shall think fit ; and for rendering such sale or sales effectual, to give delivery and possession of the estates or effects sold and to grant to the purchasers such conveyances or assignations as may be needful, with all necessary clauses : As also (if thought by the said trustee to be for the interest of creditors) to carry on the business presently carried on by for such time as he may think fit : To ask, sue for, and recover the debts due to ; and to raise and insist in or defend such actions relating to or affecting the means, estates, and effects hereby conveyed as

he shall think proper; to relet any premises tenanted by or to renounce and discharge any leases or rights of possession; and to compound, transact, and agree, or to submit and refer any questions or differences that may arise between him and any other person or persons concerning the debts due to or by or any other matter in relation to the premises in any manner of way, and in general to do everything necessary for the recovery and realisation of said means, estates, and effects, as well as everything which could have done before granting hereof; which disposition and assignation above written bind and oblige and heirs, executors, and successors to warrant to all concerned, at all hands and against all deadly, as law will; But these presents are granted and the said means, estates, and effects above conveyed are so conveyed, and shall be held in trust for the following purposes, viz.: —In the first place, for payment of the expenses hereof, and the whole expenses incurred or that may be incurred in relation to this trust or to the management or execution thereof, including a suitable remuneration for his own trouble, to be fixed as hereinafter provided: In the second place, for payment of all rents, taxes, wages, and other preferable charges due by , and of all charges that form preferable charges against estates: In the third place, appoint the said trustee to apply the proceeds that shall remain of the said means, estates, and effects in satisfying and paying *pro tanto* the debts due by to creditors at the date hereof, who shall accede hereto, rateably and proportionally, according to their respective debts, and that at such times and by such dividends, interim or final, as the said trustee shall judge proper: In the fourth place, the said trustee shall hold just count and reckoning with, and pay to or heirs and successors the residue of the said estates and effects, if any; And further, it is expressly provided and declared that these presents are granted and shall be accepted with and under the following provisions and declarations, viz.:—That in the event of all the creditors acceding to the trust hereby created accepting of any offer of composition that may be made by , and settled with , the said trustee shall be obliged to denude himself of the trust estate as then existing on receiving payment of all moneys paid, and expenses incurred by him, and a suitable remuneration to him for his trouble: That creditors, though acceding to the trust hereby created, and claiming benefit under the same, shall be entitled to the benefit of all preferences which they legally have, and of their claims against any other person or persons who may be bound along with or for or otherwise, all of which preferences and claims are hereby reserved to them entire: That the said trustee shall have the whole powers and privileges of a trustee in a sequestration under the Bankruptcy (Scotland) Act, 1913, and that the ranking of the creditors on this estate shall be regulated by the provisions of that Act so far as the provisions of that Act can be rendered applicable and so far as not herein otherwise provided: That the said trustee shall not be liable in exact diligence, nor be obliged to do diligence

other than he shall think fit, and shall be responsible for his own actual intromissions and receipts only: That accession to the trust hereby created, or drawing dividend under the same (unless the said trustee shall report that in his opinion _ have not made a full and fair surrender of estates), shall operate as a full and complete discharge to of all claims which the creditors acceding or drawing dividend may have against And that before the payment of any dividend the trustee shall adjudicate upon all the claims lodged with him and admit or reject the same: The said trustee shall, from the readiest proceeds of said estate, pay the charges attending the constitution and execution of this trust, including a suitable remuneration to himself, as the same may be fixed and determined by a committee of the creditors duly appointed, in terms of section one hundred and eighty-five of the Bankruptcy (Scotland) Act, 1913, failing which, by the Accountant of Court; which committee, or failing them, the Accountant of Court, shall audit the accounts of the transactions and intromissions of the trustee, and ascertain and declare the balance available for division and distribution among the different classes of creditors. And further hereby authorise and empower (if the said trustee shall consider it necessary for the protection of the general body of creditors, the setting aside of reducible preferences, or otherwise), to apply for sequestration of estates under the Bankruptcy (Scotland) Act, 1913, and to sign the necessary petition on behalf: And consent to the registration hereof for preservation and execution: In witness whereof, these presents, save and excepting what is printed, written by

INDEX.

Note.—A separate Index of Forms and Precedents is given on page *70*.
The figures in italics refer to the pages of Appendix.

ABBREVIATE—
For Register of Inhibitions and Adjudications, **16, 21, 22, 54, 60, 62, 65,** *6, 24.*
Effect of, **16,**
Transmitted by post, **16.**
Form of, *34, 35.*
ABBREVIATIONS—
Explanation of, **1.**
ABSCONDING—
Bankrupt may be apprehended, **16, 24.**
Bankrupt liable to criminal action, **89.**
ACCESSION OF CREDITORS—
To trust deed, **96, 97.**
To deed of arrangement, **60.**
Payment to obtain, is irregular and invalidates arrangement, **61.**
To composition contract, **63, 104, 105.**
ACCOUNTS—
Trustee must keep, **23, 46, 66.**
Separate accounts for firm and partners, **23,** *59.*
Must be open for inspection, **49.**
Submitted to meeting of creditors, **55.**
Made up pending composition, **64.**
Account current to show daily balance ought to be prepared, *58.*
Must be made up to date of completion of sequestration, *60.*
Form of account current, *65.*
Form of state of whole estate, *66.*
First, **46, 94.**
In summary sequestration, *30.*
Audit of, **46, 48, 64, 94, 95, 100, 103,** *20, 22, 30, 33, 58.*
Transmitted to A. of C., **23, 49, 64, 95,** *12, 58.*
ACCOUNTANT OF COURT—
Appointment of, *47.*
Duties of, defined, *57.*
Fees chargeable by, *49, 55.*
Keeps register of sequestrations, *26.*
Copy of notes issued by, for trustees, *57.*
And for commissioners, *68.*
Copy, first deliverance sent to, **15.**
Copy act and warrant sent to, **21.**
Copy inventory and valuation sent to, **23,** *48, 51.*
Approves allowance to bankrupt, **29.**
Copy of accounts sent to, **49, 64.**
Copies of all circulars sent to, **21.**
Sederunt Book sent to, **51, 55, 66.**
May instruct trustee to call a meeting, **30.**
Notice of trustee's petition sent to, **55.**
Extract decree of trustee's discharge sent to, **56, 62, 65, 96.**
Also of bankrupt's discharge, **54, 62, 65.**
May requisition meeting of creditors, **30.**
May concur in sale of heritage, **37, 38,** *62.*
But is not party to conveyance, **38,** *62.*
Must consent to acceleration of dividend, **49.**
Unclaimed dividends lodged in bank in name of, **55,** *25.*
Creditors may apply to him for authority to receive such, *25.*
May report on bankrupt's conduct, **53,** *27.*
May report on trustee's conduct, **55, 57,** *27.*

ACCOUNTANT OF COURT—*continued.*
May report on conduct of commissioners, **57,** *27.*
May petition for recall of sequestration, **59.**
Appointment of deputy accountant in case of illness, *27.*
Sheriff reports to, **50.**
Continuation of return sent to Accountant by trustee, **50.**
Issues form of return, **50,** *60.*
May report fraud to Lord Advocate, **54, 57, 90,** *27.*
Report to, in summary sequestration, **95,** *31.*
Application to, by trustee prior to discharge in summary sequestration, **95,** *31.*
Audits accounts of trustee under trust deed, **100, 103,** *33.*
May review trustee's remuneration, **48,** *30.*
Prints to be boxed to, *50.*
Transmission of processes to, *50.*
Copy *Gazette* furnished to, *33.*
Return of judicial factors supplied to, by Clerks of Court, *48.*
May apply for successor to factor deceased, *48.*
Prepares list of guarantee companies for approval of Lord Ordinary, *51.*
ACCOUNTANT'S LIEN, **78.**
ACQUIRENDA—
Definition of, **69.**
Personal earnings not included, **69.**
Distinction of office held *ad vitam aut culpam,* **69.**
Government pay or pension, **69.**
Damages recovered, **69.**
Administrator of a deceased undischarged bankrupt held bound to repay proceeds of life policy divided, **70.**
Claimable by trustee in sequestration, **69,** *16.*
Procedure in claiming, **69,** *16.*
Effect of failure of trustee to take proceedings, **56.**
ACT 1621, *39.*
Effect of, **8.**
ACT 1696, *41.*
Effect of, **9.**
ACT—
Acts repealed, *38.*
Bankruptcy Act (1913), *1.*
Commencement of Act, *34.*
Of Sederunt, power of Court to regulate proceedings by, *34.*
Effect of Bankruptcy Act *re* vesting, *15, 34.*
Judicial Factors Act (1889), *47.*
Codifying Act of Sederunt, *50.*
Act applying C.A.S. to proceedings under B.A. (1913), *56.*
Debtors Act (1880), *44.*
Civil Imprisonment Act, *45.*
ACT AND WARRANT—
Of trustee in sequestration, **21.**
Is *prima facie* evidence, **21,** *10.*
Registration of, **21.**
Effect of, **21, 67, 80,** *10.*
Operates as diligence in favour of ancestor's creditors, **80.**
Form of, *35.*
ACTION—
Giving up a good defence to, while insolvent, may be challengeable by creditors, **8.**
For judicial sale, **36.**
Incompetent by creditor after sequestration, **43.**
Pending, may be continued, **43.**
Damages recovered by bankrupt in, **69.**
Of maills and duties, **81.**
Superior cannot raise such, **81.**
Against trustee under trust deed to account, **100.**
Of multiplepoinding, by trustee for discharge, **103.**
ADJOURNMENT—
Of meetings generally, **31.**
Of first statutory meeting, **17, 31.**
Of bankrupt's examination, **26.**
ADJUDICATION (*see* DILIGENCE)—
Effectual, **80.**
Constitution of notour bankruptcy by, **6.**
Cannot be raised after first deliverance, **14.**
Abbreviate for register of, **16, 21, 22, 54, 60, 62, 65,** *6, 24, 34, 35.*
Abbreviate has effect of, **16.**
Sequestration equivalent to, **82,** *17.*
Expenses of, preferable, **84.**

ADJUDICATION OF BANKRUPTCY—
In England or Ireland, constitutes notour bankruptcy, **6.**
ADJUDICATION ON CLAIMS, **43, 44, 92, 94, 99,** *20, 29.*
None, if no funds, **43.**
Cannot be recalled, **44.**
Appeals against, **44.**
Objections to, **92.**
Where sequestration sisted, **61.**
ADVERTISEMENT. *See* GAZETTE, NEWSPAPER.
AFFIDAVIT. *See* OATH.
AFFIRMATION—
On petition for sequestration, **13.**
AGENTS—
In Court of Session may act before Sheriff, *28.*
AGRICULTURAL SUBJECTS—
Hypothec, *in re*, **76.**
ALIENATIONS. *See* GRATUITOUS ALIENATIONS.
ALIMENT—
Imprisonment for, *44, 45.*
To wife, from property claimed by husband's trustee, **73.**
Of civil prisoners, *46.*
ALIMENTARY FUNDS—
Vesting of, **70,** *16.*
Arrears vest in trustee, **70.**
Wife entitled to, out of her own property claimed by husband's trustee, **73.**
ALLOWANCE TO BANKRUPT, **29,** *11.*
ANNUITIES—
Valuation of, **42,** *8.*
Fixes liability of cautioner, *8.*
ANCESTOR—
Preference of creditors of, **80.**
ANNUAL RETURN (*see* REPORT)—
To Sheriff (sequestration), **50,** *26, 37.*
Failure to make, **50, 57,** *26.*
Statutory form of, *37.*
Continuation of, **50,** *60.*
Form of, issued by Accountant, **50,** *60.*
Separate for firm and partners, **50.**
Trustee may be removed for failure to make, **57,** *27.*
Accountant superintends, *27.*
ANTENUPTIAL SETTLEMENTS—
In sequestration, **8, 75.**
APPEALS—
Expense of, **44.**
Against appointment of judicial factor in sequestration, **16.**
Against appointment of trustee incompetent, **19.**
Against resolutions of creditors, **31,** *27.*
Against deliverances of trustee and commissioners, **31, 44, 93,** *20, 27, 29.*
Against valuation of contingent claims, **42.**
Against trustee's commission, **48, 64, 94,** *20.*
Against removal of trustee, **56.**
Against discharge of bankrupt, **54, 65.**
Against recall of sequestration, **59.**
By trustee on refusal of discharge, **96,** *31.*
Against Sheriff's judgments, *28.*
Against Lord Ordinary's judgments, *28.*
To House of Lords, *28.*
Possession of estate pending, *28.*
APPREHENSION—
Of bankrupt, **16, 24.**
Of bankrupt's family, agents, etc., **24, 25.**
ARBITRATION—
By trustee, **43,** *28.*
ARRANGEMENT WITH CREDITORS—
In sequestration, **60, 61, 62,** *5.*
What is "reasonable," **64.**
A second sequestration may be granted thereafter, **61.**
Effect of sequestration continues notwithstanding, for purpose of challenging preferences, **61.**
Extra-judicial, **96, 103.**
ARRESTMENT (*see* DILIGENCE)—
Equalisation of, by notour bankruptcy, **7, 10, 11.**
Sequestration equivalent to, **10, 11, 81,** *17.*
Arrester has preference for expenses, **10, 81,** *17.*
"On dependence" must be followed up without delay, **10,**
Creditor producing liquid grounds of debt, ranks equally with, **10.**

ARRESTMENT—*continued.*
Diligence in England not equalised, **81.**
Not followed up, **83.**
Must be no undue delay in following up, **83.**
Effectual, **81, 83.**
Cutting down of, **10, 80, 81,** *17.*
Given effect to in ranking, **81, 83.**
In competition with trustee, **81** to **83.**
ARTICLES OF ROUP—
Signed by trustee, **37.**
ASSESSMENTS. *See* RATES AND TAXES.
ASSIGNATION—
Cautioner paying debt entitled to, **18, 42, 87, 106.**
Unless in certain circumstances, **88.**
Act and warrant has effect of, **67,** *15.*
Of right to challenge preferences, bankrupt may stipulate for, **62.**
Of partner's debt to firm is presumed, **80.**
Of estate in security, cautioner may stipulate for, as a condition, **62, 106.**
Bankrupt must grant all necessary, **21.**
To trustee under trust deed, of right to do diligence, **102.**
ASSURANCE. *See* INSURANCE.
AUCTION SALE—
Of heritage, **37,** *17.*
Of whole estate, **50,** *21.*
AUDIT—
Of trustee's accounts, **46, 48, 64, 94, 95, 100, 103.**
AWARD. *See* SEQUESTRATION.

BANK ACCOUNT—
In name of trustees *qua* such, **47, 99,** *12.*
Penalty for failure to lodge in, **47,** *12.*
Must be vouched by bills and cheques, **40.**
Or verified in terms of statute, **40.**
May be fixed by creditors, **47,** *12.*
Or failing that, a joint stock bank, **47,** *12.*
In sequestration, examined by commissioners, **46.**
Certified, **46.**
Trustee must not be agent, etc., **47,** *12.*
BANK ACCOUNT—*continued.*
Must be balanced annually, **47,** *12.*
Dividend fund must be in bank, **47,** *59.*
Dividend on contingent and appealed claims lodged in, **45, 49.**
Unclaimed dividends, etc., lodged on deposit-receipt, **55, 95,** *25.*
Form of deposit-receipt, *61.*
Dividend only to be drawn from bank as required, *59.*
Trustee's account current should show balance in, *65.*
BANKER'S LIEN, **79.**
BANKRUPT—
Deeds of, challengeable, **8, 9, 74.**
May petition for sequestration, **12, 91.**
May challenge fraudulent preferences and alienations, **8, 62, 106.**
Wife of, no vote in election of trustee, **19.**
Wife of, is a postponed creditor, **45, 72.**
State of affairs and rental by, **18, 90,** *12.*
Examination of, **23, 24, 25, 43, 54, 63, 92,** *12.*
And of his family, etc., **23, 26,** *13.*
Apprehension of, **24,** *13,*
And his family, **24,** *13.*
Must accept reconveyance of security, **39.**
May be examined *re* claims, **43.**
Dispositions by, for own behoof, **72, 74.**
Property of wife, **72.**
Uncompleted contracts of, **71, 98.**
Acquirenda of, **69,** *16.*
Alimentary funds, **70,** *16.*
Spes successionis of, **70,** *16.*
Copyright of, **72,** *17.*
Bills of exchange collected by, **69,** *17.*
Debts uplifted by, **69,** *17.*
Sales by, after sequestration, **68,** *17.*
Sale of wife's property by, **73.**
Voluntary discharge of debt during insolvency by, **8.**
Purchases by, after insolvency, **68,** *20.*
Discharge of, **52, 61, 67, 95, 103.**

BANKRUPT—*continued.*
Disqualification from holding certain offices, *33*, *42*.
Restrictions on discharge of, *24*.
May renew application for discharge, **52**.
Forfeits privileges if guilty of collusion, *25*.
May appeal *re* trustee's commission, **48**, **94**.
Notice to, of trustee's commission, **47**.
Notice to, of appeals against resolutions, **31**.
Notice to, of valuation of contingent claims, **42**.
Trust property held by, **72**.
Personal earnings of, **69**.
Pension of, **69**, *24*.
Working tools and implements of, **70**.
Damages recovered by, **69**.
Entitled to indemnity, **69**.
Savings by, are claimable, **69**.
Profits of trade claimable, **69**.
Must notify trustee of *acquirenda*, **69**.
Insurance policy of undischarged, **70**.
Uncompleted contracts of, **71**.
Husband's *jus mariti*, **72**, **73**.
Must notify trustee of false claims, **90**.
May inspect process in summary sequestration, **92**.
Trustee may insure life of, *12*.
Must submit to medical examination, *12*.
Allowance to, **29**, *11*.
Must afford trustee information and sign necessary deeds, **21**, **89**, *12*, *13*.
Penalty for failure to do so, **21**, *12*.
Must produce documents, *13*.
Deceased, **13**, **22**, **29**.
Must have paid 5s. per £, **52**.
Trustee's report on conduct of, **52**, *61*.
Trustee not entitled to fee for report, *61*.
Accountant's report on, **53**.
May be refused discharge even after two years, **83**, *25*.
May require to pay expenses, **53**.
Declaration or oath by, **54**, **61**, **65**.
Statutory oath by, **25**.

BANKRUPT—*continued.*
Reinvestment of, **54**, **65**.
Radical right of, **54**.
May petition for recall of sequestration, **58**.
On composition, may stipulate for right to challenge preferences, **62**.
But must give notice to creditor, **62**.
Not discharged from Crown debts, **65**, *24*.
Punishment of, for fraud, **89**, *32*.
May be proceeded against under statute or common law, **89**, *32*.
Undischarged, purchases on credit by, **90**, *32*.
Absconding with £20 a criminal offence, **90**, *32*.
Failure of, to lodge state of affairs, criminal, **89**, *32*.
Discharge of, under trust deed, **102**, **106**.
May interfere to prevent misappropriation, **102**.
Radical right remains in, **102**, *26*.
Surplus paid to him, *26*.
BANKRUPTCY—
Of petitioning creditor, **12**.
BEDDING—
Exempt from landlord's hypothec, **77**.
BENEFICIUM COMPETENTIÆ—
Of bankrupt, **69**.
BILLS OF EXCHANGE—
Charge may proceed on extract registered protest of, **6**.
Granted gratuitously, **8**.
As a fraudulent preference, **9**.
Deduction of interest, **18**, **40**.
Prescribed, is not a good voucher for a claim, **41**.
Contingent claim in respect of, **45**.
Banker's lien over, **79**.
Ranking in sequestration, **32**.
Prescription of, **41**.
For composition, **66**.
Uplifted by bankrupt after sequestration, **69**.
Trustee must put creditor in his original position, **69**.
BONDS (*see* SECURITY)—
Charge may proceed on extract registered bond, **6**.

BONDS—*continued.*
Voting on, in bankruptcy, **34.**
Grant of reversion of, **40.**
BOOKS—
Destroying, a crime, **89.**
Falsifying, a crime, **89.**
Want of proper, to be reported by trustee, **52.**
Failure to keep, is a criminal offence, **89.**
Failure to keep, should be brought out in examination, *58.*
BURGH RATES—
Preferable, **84.**

CALLS ON SHARES—
Liability for arrears, **45.**
Bankrupt liable for future, **45.**
Payment of dividend does not entitle to rights of member, **45.**
CARGO—
Lien over, **79.**
Stoppage *in transitu* may affect trustee's title, **68.**
CARRIER'S LIEN, **78.**
CATHOLIC CREDITOR—
Rule of ranking, **76.**
CAUTION—
By judicial factor in sequestration, **16.**
By judicial factor under B.A., s. **163,** *50.*
By trustee in sequestration, **20,** *10.*
In case of deed of arrangement, **61.**
For composition, **62, 63, 64, 65, 104.**
Insufficiency of, a ground of objection, **64.**
Bond of, **20, 56, 62, 63, 65,** *10.*
Form of bond, *35.*
Bond of, lodged with Sheriff-Clerk, **20,** *10.*
Bond of, delivered up, **56, 96,** *32.*
Bond of guarantee society accepted, **20,** *10.*
Premium on bond of, chargeable against estate, **20,** *10.*
CAUTIONERS
Distinguished from obligant liable in relief, **32.**
Discharge of, **106.**
Liability of, for bankrupt's composition, **62, 106,** *23.*
Liability of, limited by creditor's valuation of annuity, **42,** *8.*

CAUTIONERS—*continued.*
Must account to trustee for security held, **42.**
Trustee may discharge co-cautioner without consent of commissioners, **43.**
May stipulate for conveyance of estate, **62.**
Not liable after two years, **62,** *23.*
Ranking of, *inter se*, **87.**
May get benefit of creditor's unexhausted ranking, **87.**
Ranking of solvent, **87.**
Ranking of, on principal debtors' estate, **87,** *8.*
May challenge fraudulent preferences, **106.**
Subsequent sequestration does not free cautioner for composition, **106.**
Paying debt entitled to assignation, **18, 42, 62, 106.**
Unless in certain circumstances, **87.**
CAUTIONARY OBLIGATIONS—
Ranking of, **18, 42, 86, 87.**
Deduction of value, unnecessary, **32.**
Ranking by cautioner, **18, 42, 86.**
Partners are cautioners, **87.**
Prescription of, **41.**
CERTIFICATE—
Of postage in case of composition, **64.**
CESSIO—
Now superseded, **91.**
Subsisting cessios to proceed, *34.*
CHALLENGE. *See* FRAUDULENT PREFERENCES AND ALIENATIONS; TRUST DEEDS.
CHARGE—
Expired, constitutes notour bankruptcy, **6.**
Foundation of, **6.**
CHILDREN—
Dispositions to, may be reducible in bankruptcy, **8, 75.**
Insurance policy in favour of, **74.**
CIRCULARS (*see* NOTICES)—
Copies of all, to Accountant, *12.*
CITATION (*see* WARRANT)—
Warrant of, **14,** *4.*
Method of, **15,** *4, 28.*
Notice in *Gazette*, **14,** *4.*
Inducicæ, **15,** *4.*
Edictal, **15.**

CITATION—*continued.*
By post, **15.**
Of company, **15,** *4.*
Of tutors and curators, **15.**
Of heritable creditors, **36.**
CLAIMS AGAINST CO-OBLIGANTS—
Must be stated by petitioner, **13.**
Must be valued for voting, **18, 31, 32, 33, 34,** *8.*
But not for ranking, **39,** *9.*
Must be stated on oath, **31,** *8.*
CLAIMS BY CREDITORS (*see* OATH)—
Date of production noted, **39.**
Scrutiny of, **18, 43.**
Initialed, **18.**
Entered in Sederunt Book, **18.**
False claims, bankrupt must notify, **90.**
Interest on, **18,** *7.*
Discount on, **18, 40,** *7.*
Where voucher cannot be produced, **39,** *7.*
Classified lists of, **44, 92.**
Objections to, **19, 40.**
Rectification of, **43,** *7.*
On gambling transaction, **41.**
For annuities, **42,** *8.*
Prescription of, **40, 41.**
Valuation of, **18, 31, 39, 42,** *8, 9.*
Deduction from, **18, 32, 40.**
On partnerships and partners, **34, 88,** *9.*
On deceased's estate, *51.*
Ranking of, **43, 44, 93, 99,** *7, 9.*
Preferable, **45, 75, 99.**
May be paid forthwith, **38.**
Ordinary, **45.**
Contingent, **42, 45,** *7.*
Postponed, **45.**
Where dividend accelerated, **38.**
Lodgment of, by preferable creditors may be dispensed with, **38, 44.**
Challenge of, *23.*
Lodgment of, **18, 31, 38, 92, 94,** *19, 29.*
Adjudication on, **43, 44, 93, 94, 99,** *29.*
Rejection of, **43, 93.**
Lost, **17.**
Order for fresh claim, **17.**
Landlord, **40, 76, 77, 78.**
For royalties of authorship, **72.**
For damages, **53.**
CLAIMS BY CREDITORS—*continued.*
Purchased, do not entitle to vote for trustee, **19.**
Nor postponed claims, **19.**
Made up to date of sequestration, **24, 40,** *7, 19.*
To vote, **31** to **36.**
On partners' estates, **34, 88, 89.**
Resident abroad, **39,** *19.*
Under appeal, dividend placed in bank, **49,** *21.*
Forfeiture of, **52, 91.**
Penalty for making a false, **90.**
For workmen's compensation, **67, 86.**
Law agent, **83.**
For composition, **105.**
For debt if composition not paid, **61, 67, 105.**
CLERKS—
Preference for salaries, **15.**
COLLUSIVE—
Transactions, reduction of, **8, 9, 52.**
Effect *in re* bankrupt's discharge, **52,** *25.*
Penalty on creditor, **52.**
Transaction to obtain consent to deed of arrangement, **61.**
Or composition, **64.**
Transactions, objection to deed on ground of, **64.**
Transactions, declaration that none such, **54, 65.**
COLONIAL ESTATE—
Vesting of, *15.*
COMMISSION—
Lien for, **101.**
Trustee under trust deed no implied claim for, **103.**
Lien for, by trustee under trust deed, **103.**
Of trustee in summary sequestration, **93,** *30.*
Under trust deed, fixed by Accountant if no committee, *33.*
Forfeiture by trustee of, **100.**
Accountant may fix, **100.**
Trustee's, **47, 48, 100,** *20.*
Traveller's preference for, **85.**
Trustee cannot take payment to account, **47.**
Must be settled at each audit, **47.**
Is inclusive, **47,** *62.*
Appeals against, **48,** *20.*

COMMISSION—*continued.*
Nothing extra for report on bankrupt's conduct, **52,** *61.*
Must be paid before bankrupt gets discharge, **53.**
COMMISSIONERS IN SEQUESTRATION—
Election of, **20,** *11.*
Objections to votes for, **19.**
Majority of, **20.**
Gratuitous office, **20.**
Duties of, **20,** *12, 68.*
Anyone may report to creditors, **20.**
Cannot purchase estate, **38.**
To consent to compromise or arbitration, **43.**
Consent of, unnecessary for ordinary acts, **43.**
E.g. Discharge of cautioner, **43.**
Election of new, **57,** *11.*
Removal of, **57,** *11.*
Meetings of, **46,** *20.*
Censure of, **57.**
Audit accounts, **46, 49, 63, 94,** *20, 69.*
See law charges are proper, **46, 94,** *20, 69.*
Examine bank account, **46,** *20, 69.*
Fix trustee's commission, **47, 64, 94,** *20.*
Certify cash on hand, **47.**
Declare dividend, **47,** *20.*
Concur in acceleration of dividend, **49.**
May postpone dividend, **49.**
Ceasing to have interest, **58.**
Cannot charge for services, **46.**
May call meeting of creditors, **30.**
May apply for removal of trustee, **56.**
Recall of mandate of, **58.**
COMMON LAW—
Reduction of alienations and preferences at, **8, 9.**
Husband's trustee's claim on wife's property under, **73.**
No deduction of securities at, **99.**
Privileged debts at, **99.**
COMPANY (*see* PARTNERSHIP)—
Oath by company creditor, **14.**
COMPENSATION (*see* WORKMEN'S COMPENSATION)—
Of debts, **9.**
Claims for workmen's, **67, 86.**
COMPOSITION CONTRACT—
In sequestration, **62,** *21.*
Sequestration to proceed notwithstanding offer, *23.*
Offer may be accepted at second statutory meeting, **23, 30, 66,** *22.*
Or subsequently, **66,** *22.*
After being once rejected, **66,** *23.*
Security for, **62.**
Preferable debts must be paid in full under, **62.**
Binds all creditors, **65.**
Notice of challenge of any claim must be given, *22.*
Payment of, **66.**
Essentials, **62.**
Notice of, **63.**
Effect of, **67.**
Entries in Sederunt Book, **52, 64.**
Extra-judicial, **103.**
Effect of, **105**
Form of, **104.**
Implied conditions, **103.**
Accession of creditors necessary, **104.**
Lien of trustee for outlays and remuneration, **103.**
Audit of accounts, **103.**
Challenge of preferences under, **106.**
Essentials, **104.**
Reduction of, **105.**
Discharge of debtor under, **106.**
Discharge of cautioner under, **106.**
COMPROMISE—
Trustee may, **43,** *28.*
COMPUTATION—
Of time under B.A., **29.**
Of majorities, **32, 53.**
CONCEALMENT—
Of property, books, etc., a criminal offence, **89.**
CONFIDENTIAL—
Documents not entered or exhibited, **51.**
CONFIRMATION—
Of trustee in sequestration, **20.**
Of executor creditor in competition with trustee in sequestration, **82.**
CONSTRUCTIVE—
Delivery of goods, **68.**
Intimation of delivery orders not sufficient, **68.**

CONTINGENT DEBT—
Does not qualify petitioner, **13.**
Ranking of, **45,** *7.*
Valuation of, **42,** *7.*
No vote for, unless valued, **42, 45,** *7.*
Unvalued claim: claimant neither votes nor ranks, **45.**
Liability for future rent not a, **45.**
CONTRA—
Accounts must be deducted from claim, **40.**
CONTRACTS—
Uncompleted by bankrupt, **71, 98.**
Involving a *delectus personæ,* **71.**
CONVEYANCE—
Bankrupt must grant, **21.**
Exempt from stamp, etc., duty, **21.**
Trustee may grant without feudal title or consent of bankrupt, **22, 37,** *16.*
Of security, creditor bound to grant, on payment of value, **36, 42.**
Bankrupt bound to accept reconveyance of security, **39.**
Cautioner may stipulate for, in security, **62.**
CO-OBLIGANTS (*see* CLAIMS AGAINST CO-OBLIGANTS)—
Claims against, **13, 18, 32, 33, 34, 39,** *8.*
Claims against bankrupt's estate by, **18, 42.**
Onus of proof that bankrupt has right of relief against, **32.**
Liable in relief, distinguished from cautioners, **32.**
Deduction of claims against, **32, 33,** *8.*
Purchase of claims against, **36, 42.**
Must account to trustee for security held, **42,** *9.*
Not freed by any vote given or dividend drawn by creditor, *8.*
COPYRIGHTS—
Trustee claiming, must pay royalties, **72,** *17.*
CORPORATION—
Oath in case of, **14.**
COUNTY RATES (*see* RATES AND TAXES)—
Preference for, **84.**
COURT (*see* LORD ORDINARY, SHERIFF)—
May remove trustee, **56, 102.**
COURT—*continued.*
May fill vacancy in trusteeship under trust deed, **97, 102.**
May order fresh claims where productions lost, **17.**
Having jurisdiction in sequestration, **12, 13.**
And in summary sequestration, **91.**
CREDITORS (*see* CLAIMS, NOTICES, MEETINGS, VOTING, etc.)—
Votes, **31, 53.**
Meaning of "prior creditor," **8.**
Petitioning creditor, qualification, **13.**
Preferences of, **9, 44, 75, 81.**
Diligences, **80, 83.**
Postponed, **45.**
Resident abroad, **39.**
How oath to be taken, **13.**
Representative of foreign creditor may make oath of credulity, **14.**
Oath by agent of creditor *incapax,* **14.**
Punishment of fraudulent, **90.**
Partnership creditor ranking, **88.**
Certain notices must be sent to every, **63.**
Who entitled to notice of second meeting, **24, 30.**
And meetings generally, **30, 63.**
Not liable for expenses, *8.*
Interdict when owing to negligence creditor has received no notice, **24.**
But not where creditor is at fault, **24.**
Under £20, not entitled to notice generally, **30.**
Preferable, may not require to deduct security, **40.**
Contingent, may value claim, **42, 45.**
Secured, must deduct security, **18, 31-36, 40.**
But may revalue security, **42.**
May rectify claim, **43.**
May appeal against adjudication, **44, 92.**
For loan to partnership, **45.**
Notice to, of dividends, **47, 48, 49.**
Notice to, of trustee's commission, **47, 48, 49.**
May appeal *re* trustee's commission, **48, 94.**
Meeting of, to discharge trustee, **55.**

CREDITORS—*continued.*
Declare opinion of conduct, **55.**
Objecting creditor heard, **56.**
May remove trustee, **56.**
May remove commissioner, **57.**
To intimate recall of mandate, **58.**
May petition for recall of sequestration, **58.**
May approve arrangement, **60.**
Of deceased, preferences in case of diligence, **80.**
Prior creditors not affected by inhibition, **82.**
Consent to trust deed, **96.**
Non-acceding creditor's rights under trust deed, **97, 100, 101.**
Proof of accession, **97, 105.**
Secret preference to, a ground of reduction, **101, 105.**
Diligence by non-acceding, frees acceding creditors, **101, 102.**
Consent to composition, **104.**
Non-acceding creditors, **105.**
Neutrality of, does not entitle acceding creditor to withdraw, **96.**
Consent to sequestration, **13.**
Postponed, no vote in election of trustee, **19.**
On debts incurred by testamentary trustee no vote for trustee, **19.**
Must have voucher of debt, **18, 39.**
No legal claim on gambling transaction, **41.**
Consent to bankrupt's discharge, **52, 53, 95.**
Objections thereto, **53.**
Catholic and secondary, **76.**
Right to do diligence, **101.**
May require a meeting to be called, **30, 92.**
Meeting of, may demand conveyance of security, **36.**
May consent to private sale of heritage, **38.**
May authorise public sale, **37.**
May demand return of vouchers, **40.**
Co-obligant may rank in place of, **42.**
Cannot constitute debt after sequestration by action, **18, 43.**
May inspect accounts, **49, 92.**
May inspect Sederunt Book, **51.**
Penalty on, for collusion, **52.**
Committee of, under trust deed, **100.**

CRIME. *See* FRAUD.
CRIMINAL—
Charge, examination of bankrupt by commission in such a case, **26.**
Acts by bankrupt, **89.**
Prosecution by Lord Advocate, **54, 57, 90.**
Prosecution of creditor, **95.**
CROWN DEBTS—
Imprisonment for, *44.*
Preferable, **85.**
Exempted from discharge under Bankruptcy Acts, **65,** *24.*
Diligence for, **82.**
CURATOR—
Prescription of claims by, **41.**

DAMAGES—
Recovered by bankrupt not claimable by trustee, **69.**
For breach of bankrupt's contracts, **71.**
DATE—
Of deeds, *1.*
Of sequestration is first deliverance, **14, 24,** *6.*
Such stated in notice to creditors, **24.**
In relation to which privileged debts are calculated, **84, 85.**
DEATH—
Of petitioning creditor, **12.**
A public fact, **89.**
Of trustee in sequestration, **56.**
Of trustee under trust deed, **102.**
DEATHBED AND FUNERAL EXPENSES—
Preferable to landlord, **78.**
To other private debts, **84.**
May be paid by judicial factor forthwith, *52.*
DEBTORS (*see* DISCHARGE, BANKRUPT, DECEASED DEBTOR)—
Immediate notice to, by trustee, **23, 69.**
Privileged, **84.**
Partnership, **88.**
For Crown taxes and rates, **65, 82.**
Deceased, sequestration of, **13, 22, 29, 58,** *51.*
DEBTS—
Uplifted by bankrupt after sequestration, **69.**
To Crown, exempt from B.A., **65.**

DEBTS—*continued.*
Revival of debt on failure to pay composition, **61, 67, 106.**
Forfeiture of, **52.**
Sale of, within twelve months incompetent, **50.**
No claim on gambling, **41.**
Voluntary discharge of, during insolvency, **8.**
Contingent creditor cannot petition for sequestration, **13.**
Illegal, **41.**
Liquid, definition, **13.**
Acquired after sequestration, **19.**
Prescription of, **41.**
Valuation of contingent, **42.**
Preferable, may be paid forthwith, **38.**
DECEASED DEBTOR—
Petition in case of, **13,** *2.*
Forum in case of, *3.*
Six months allowed to successors to take up succession, **13,** *2.*
Unless debtor notour bankrupt, **13,** *2.*
Mandatory may petition, **13,** *2.*
Creditor cannot be confirmed *executor creditor* after first deliverance, **14.**
Nor raise adjudication, **14.**
Where successors have made up title trustee can recover, **22.**
Recall of sequestration of, **58.**
Creditors of, have preference in case of diligence, **80.**
Diligence within sixty days prior to death ineffectual, **82,** *17.*
Also preferences granted, **82,** *17.*
Privileged debts calculated in relation to date of death, **84.**
Deceased partner's estate not liable for posterior debts, **88.**
Winding up estate of, by judicial factor, **28,** *27, 51 et seq.*
DECLARATION. *See* OATH.
DEDUCTIONS—
From claims for voting, **31.**
For ranking, **40.**
Of security by preferred creditor, **40.**
DEED (*see* TRUST DEEDS)—
Date of, under B.A., **9,** *1.*
Of arrangement, **60.**
DEED OF ARRANGEMENT. *See* ARRANGEMENT.
DEFICIENCY STATEMENT—
Form of, *58.*
DEFINITION—
Of terms, *1.*
DELECTUS PERSONÆ—
In case of bankrupt's contracts, **71.**
DELIVERANCE—
First, sequestration dates from, **14.**
Awarding sequestration, **16, 91.**
Of trustee on claims, **43, 44, 92.**
Cannot be recalled, **44.**
Conclusive unless appealed, **44.**
Appeals against, **44.**
Discharging bankrupt, **54.**
Discharging trustee, **56, 95.**
Removing trustee, **56.**
Recalling sequestration, **58, 59, 60.**
Terminating sequestration under deed of arrangement, **61.**
Approving composition, **65.**
Re *acquirenda,* **69.**
DELIVERY—
Order, intimation of, is not constructive delivery, **68.**
DILIGENCE—
Competition of, with sequestration, **10, 11, 75, 80,** *17.*
Equalisation of, **7, 10, 81,** *2.*
Cut down by sequestration, **10, 24, 82.**
Judicial production of liquid grounds of debt equivalent to, **10,** *2.*
Prevented by lodging abbreviate, **16.**
Effectual, **80.**
Preference for expenses of, **81.**
Crown's, **82.**
Over property in England not cut down or equalised, **82.**
In case of deceased debtor, **80, 82.**
Not affected by factor under B.A., **28.**
Competition of, with trust deed, **97, 102.**
Assignation to trustee of right to do, **102, 106.**
Against heritage of deceased debtor, **81.**
Accession to trust deed precludes, **98.**
Not competent after trustee completes title, **98, 101.**
To cite witnesses and havers granted in summary sequestration, *29.*
DIRECTORS—
Managing, no preference for salary, **85.**

DISCHARGE—
Exemption from stamp duty, **21.**
Of bankrupt under sequestration, **52,** *21.*
Restrictions on, *24.*
Under summary sequestration, **94,** *31.*
Effect of, **54, 61, 67.**
Primary condition, **52.**
Application for, may be renewed, **52.**
Report by trustee prior to, **52.**
Collusive transactions to obtain, **52, 64,** *25.*
Report by Accountant of Court *in re,* **53.**
May be refused even after two years, **53,** *25.*
Affected by trustee's failure to take steps to recover *acquirenda,* **56.**
Bankrupt must pay expenses before he gets, **53, 64.**
Under deed of arrangement, **61.**
Under composition, **65,** *21.*
Also under private deed, **97, 102.**
Does not apply to Crown debts, **65,** *24.*
Of bankrupt under private composition, **106.**
Of trustee under sequestration, **55,** *25.*
Under summary sequestration, **95,** *31.*
Of co-cautioner with bankrupt, **43.**
Of cautioner, under composition contract, **106.**
Of judicial factor, *52.*
Of trustee under composition arrangement, **66.**
Of trustee under trust deed, **97, 103.**
Non-acceding creditor not bound to, **97, 105.**
DISCOUNT—
Deduction of, from claims, **18, 39, 40.**
DISPOSITION (*see* CONVEYANCES, FRAUDULENT PREFERENCES AND ALIENATIONS)—
By bankrupt for own behoof, **74.**
DIVIDEND IN BANKRUPTCY—
Equalising, **39, 95,** *19, 31.*
To creditor abroad, **39,** *19.*
Where vouchers not produced, **39.**
First, **46-49,** *29, 30.*
Subsequent, **49,** *20, 21, 31.*
DIVIDEND IN BANKRUPTCY—*continued.*
Lodgment of claims for, **38,** *19.*
Declared by commissioners, **47,** *19.*
Scheme of division, **49,** *20.*
On contingent claims, **45,** *21.*
On claims appealed, **49,** *21.*
After sequestration sisted, **61.**
Payment of, **49, 93, 99,** *18.*
Creditor receiving no notice may interdict trustee in certain circumstances, **24.**
To creditor resident abroad, **39.**
Five shillings minimum for discharge, **52, 64.**
Acceleration of, **49,** *21.*
Postponement of, **49, 92,** *21, 30.*
Alteration of periods for, **50,** *21.*
Forfeiture of, **52.**
Unclaimed, **55, 95,** *25.*
Form of deposit-receipt for unclaimed dividends, *61.*
Under a trust deed, **100,** *60.*
Non-acceding creditor entitled to, **97.**
Without discharging trustee, **100.**
Under summary sequestration, **93, 94,** *29, 30, 31.*
Under judicial factory, *52.*
Trustee and commissioners determine in summary sequestration, **93.**
Must be drawn from bank only as required, *59.*
DOCUMENTS—
Lien over, **79.**
Constituting claim, **39.**
Invalidity thereof, **41.**
Confidential, not engrossed in Sederunt Book, **51,** *12.*
Of debt to be delivered up on payment of composition, **66.**
DOMICILE—
Of petitioning creditor, **12.**
In case of company, **12.**
DUTIES—
Exemptions from Government, **21,** *33.*

EDINBURGH GAZETTE (*see* GAZETTE)—
Open for inspection gratis, **17,** *33.*
ENGLISH BANKRUPTCY ACTS—
Excerpts from, *42, 43.*
Application to Scotland, *33.*

English Courts—
Aid in carrying out orders of Scottish Courts, **24, 26,** *42, 43.*
Transfer of sequestration to, **59.**
Warrants of, to be enforced in Scotland, *42, 43.*
Registration of orders of, *54.*
English Estate—
Registration of act and warrant, **21.**
Transfer of proceedings where principally, **59,** *6.*
Vesting thereof, **67,** *15.*
Diligences against are not affected by Scottish sequestration, **81.**
Trustee takes, subject to all attachments prior to sequestration, **82.**
English Sequestration—
Prevents award in Scotland, **12.**
Estate (*see* Title, Bankrupt, Trustee, English, Irish, Colonial)—
Subject to sequestration, **67.**
Improperly included in sequestration, *16.*
Possession of, pending appeals or complaints, *28.*
Equalisation—
Of diligence, **6, 7, 10, 81.**
Notour bankruptcy may be reconstituted to effect, **6.**
Of dividends, **39.**
Evidence—
Minutes of creditors' meeting, **53.**
Act and warrant certified is *prima facie* evidence throughout His Majesty's dominions, **21,** *28.*
Of claim, **39.**
Trustee may require further, at any time, **43, 44.**
Oath not to supersede other, *8.*
Deliverance of Lord Ordinary and Sheriff to be *prima facie*, *28.*
Of insolvency, **5.**
Examination—
Of bankrupt in sequestration, **23, 24, 25, 26, 43, 54, 63,** *12.*
Object thereof, **23.**
Bankrupt absconding to avoid, **24, 90.**
Bankrupt's failure to submit to, is a criminal offence, **90.**
Incompetent questions, **23.**
Lines of, **26,** *57.*
Examination—*continued.*
Who may put questions, **25.**
On collateral matters incompetent, **23.**
Penalty for refusal to answer, **25,** *14.*
Production of documents by third parties may be compelled, **26,**
Personal explanations to trustee need not be brought out at examination but ought to be minuted, *57.*
Adjournment thereof, **26.**
By commission, **26,** *13.*
Of bankrupt's family, etc., **26,** *13.*
Recording of, *13.*
Of creditors and others, *re* claims, **43.**
Re *acquirenda*, **69.**
Medical, bankrupt must submit to, **71.**
In summary sequestrations, **92,** *29.*
Deficiency statement to be prepared thereafter, form of, *58.*
Executor-Creditor—
Cannot be appointed after first deliverance, **14,** *5.*
Confirmation after death ineffectual against trustee, **82.**
Exemption—
Of small dwellings from hypothec, **77.**
Expenses—
Of competition for trusteeship, **19,** *10.*
Of appeals against adjudication on claims, **44.**
Of appeal to Accountant *re* trustee's commission, *30.*
Of finding caution by judicial factor, a valid charge, *50.*
Of conveyance of security to trustee, **42.**
Of litigation, **44, 79, 84, 99.**
Of diligence, preference for, **81, 84.**
Of sequestration, **84,** *8.*
Bankrupt must pay as condition of discharge, **53.**
Creditors not liable therefor, *8.*
Trustee may be liable for, **57.**
Of trust deed, lien for, **101, 103.**
Lien for law, **79.**
Hypothec for law, **84.**

EXTRACT—
Of appointment of judicial factor to have effect of assignment, etc., *49*.

FACTOR—
Lien of, **79**.
FALSE CLAIM—
Bankrupt's failure to notify, **90**.
FALSEHOOD—
Punishment of wilful, *33*.
FALSIFICATION—
Of books and papers a criminal offence, **90**, *32*.
FEES (*see* COMMISSION)—
In Accountant's Department, *49*, *55*.
Payable in stamps, *49*.
May be remitted in exceptional circumstances, *55*.
FEU-DUTY—
Hypothec for, **76**.
Superior cannot raise action of maills and duties for, **81**.
FICTITIOUS LOSSES—
To account for deficiency, **90**.
FINES. *See* PENALTIES.
FIRM. *See* PARTNERSHIP.
FOREIGN CREDITOR—
Oath by, **13**.
Lodgment of claim by, **39**, *19*.
FOREIGN ESTATE—
Registration of act and warrant, **21**.
Certified act and warrant *prima facie* evidence, **21**.
Vesting of, **67**.
FORFEITURE—
Of claim, **52**, **91**.
Of discharge by bankrupt, *25*.
FORUM—
For sequestration, *3*.
FRAUD (*see* PUNISHMENT, FRAUDULENT PREFERENCES, AND ALIENATIONS)—
Prosecution by Lord Advocate for, **54**, **57**, **90**, *27*, *32*.
Objection to composition on ground of, **64**.
Purchase of goods on credit after avowed insolvency, **68**.
Sale of goods by bankrupt after sequestration, **68**.
Debts, bills, or securities uplifted by bankrupt after sequestration, **69**.
FRAUD—*continued*.
Insurance policies to defraud creditors, **74**.
By bankrupt, punishment of, **89**, *32*.
By creditor, punishment of, **90**, *32*.
As ground of reduction of composition contract, **106**.
FRAUDULENT ALIENATIONS (*see* GRATUITOUS ALIENATIONS), **8**, **74**.
Fraud presumed if gratuitous, **8**.
Insurance policies taken out within two years, **74**.
Bankrupt may stipulate for right to challenge, **62**.
By heir to prejudice of ancestor's creditors, **81**.
Act relating to, *39*.
FRAUDULENT PREFERENCES—
Reducible at common law, **5**, **9**.
Reducible under Act 1696, **7**, **9**, *41*.
Common law and statute compared, **9**.
Meaning of "prior creditor," **8**.
Nova debita, **9**.
Implement of prior obligations, **9**.
Must be voluntary, **9**.
Collusion unnecessary, **9**.
Date of deed, **9**.
Debtor must have been conscious of insolvency, **9**.
Fraud presumed, **9**.
By endorsing bill, **9**.
By paying prematurely, **9**.
By facilitating legal proceedings, **9**.
By abandoning a defence, **9**.
To obtain consent to discharge, *25*.
To obtain consent to deed of arrangement, **61**, *25*.
Reducible, although sequestration terminated by deed of arrangement, **61**.
Bankrupt may stipulate for right to challenge, **62**.
But must give notice to creditor, **62**.
To obtain consent to trust deed, **101**.
Or composition contract, **105**.
Challengeable under composition contract, **105**.
Appointment of factor under B.A., s. 163, no effect *in re*, **28**.
FREIGHT—
Hypothec of seamen over, **78**.
Lien over cargo for, **79**.

FRIENDLY SOCIETIES—
Funds in sequestration, **72.**
FURNITURE—
Of wife, sold by landlord, **77.**
Trustee may remove furniture between 15th and 28th May, **77.**
Transferred by wife to husband's house, not immixed, **72.**
Landlord's hypothec over, **76.**
On gratuitous loan, **77.**
Wife's, not subject to diligence of husband's creditors, **77.**

GAMBLING TRANSACTION—
No claim on, **41.**
Unless where agency intervenes, **41.**
GAZETTE NOTICES (*see* EDINBURGH GAZETTE, LONDON GAZETTE)—
Of citation warrant, **14.**
Of first statutory meeting, **17.**
Form of, *34.*
When to be inserted, **17.**
Of bankrupt's examination, **23, 92.**
Form of, *35.*
Of second statutory meeting, **23, 29, 92.**
Of meetings generally, **30.**
Of dividends, **47, 48, 49, 94.**
Of postponement of dividend optional, **49.**
Of sale of estate, **50, 51.**
Of bankrupt's discharge, **53.**
Of trustee's discharge, **55.**
Of removal of trustee, **56.**
Of recall of sequestration, **59.**
Of deed of arrangement, **61.**
Of composition contract, **63.**
Of petition re *acquirenda*, **70.**
Of petition for judicial factor, *51.*
Form thereof, *52.*
Notice for claims by judicial factor, *51, 53.*
Notice of dividend by judicial factor, *52, 53.*
Re factor's discharge, *52, 53.*
Of retiral of partner necessary, **88.**
Open for public inspection, *33.*
GIFTS. *See* GRATUITOUS ALIENATIONS.
GOODS (*see* HIRE PURCHASE)—
Bought but undelivered, trustee's claim to, **67.**
Bought on credit during insolvency, **68, 89.**
GOODS—*continued.*
Sold by bankrupt after sequestration, **68.**
Re-sale of, **68.**
Stoppage of, *in transitu*, **68.**
Lien over for price, **68.**
Rejection of, by bankrupt, **68.**
Perishable, **68.**
Restitution of, **68, 69.**
Constructive delivery of, **68.**
Separation of bulk necessary, **68.**
Sold without landlord's consent, **71.**
Carrier's lien over, **78.**
Shipowner's lien for freight, **79.**
Factor's lien over, **79.**
Landlord's hypothec over, **76.**
Also over goods sold but undelivered, **77.**
GOODWILL—
Seller to a partnership for share in profits is a postponed creditor's, **45.**
GOVERNMENT—
Pay pensions, etc., of bankrupt, **69.**
GRATUITOUS ALIENATIONS—
Illegal during insolvency, **5.**
Reducible at common law, **5, 7.**
Reducible under Act 1621, **7,** *39.*
Nature of conveyance, **8.**
Challenge, **8.**
Onus of proof, **8.**
Fraud, **8.**
To conjunct and confident persons, **8.**
Meaning of "onerous consideration," **8.**
Meaning of "prior creditor," **8.**
By heir to prejudice of ancestor's creditors, **81.**
Bankrupt may stipulate for right to challenge, **62.**
After insolvency, a criminal offence, **90.**
GUARANTEE (*see* CAUTION, CAUTIONER, CAUTIONARY OBLIGATIONS)—
Society bond accepted, **20.**
Accountant prepares list of guarantee companies, *51.*
Premium a valid charge, **20,** *51.*

HAVERS—
Diligence to cite, **93, 96,** *30.*
HERITABLE CREDITOR—
Citation of, **36.**

HERITABLE CREDITOR—*continued.*
Sale by, alone, **37.**
Consent to sale, **37, 38.**
Where delays to sell, **37.**
Law agent's lien effectual against bankrupt's, **83.**
HERITABLE ESTATE—
Adjudication of, **80.**
Inhibition against, **16, 83.**
In sequestration, **22, 36, 37.**
Priority of infeftment, **22.**
In case of deceased bankrupt, **22, 80.**
Arrangements for sale, **30.**
Judicial sale of, **36.**
Public sale of, **37,** *18, 62.*
Private sale of, **37,** *18.*
Scheme of ranking on, **38,** *18.*
Purchaser of, **38,** *18.*
Alienation of, **16.**
Completion of title, **22.**
HIRE PURCHASE, **77.**
HOLOGRAPH—
Writs, prescription of, **41.**
HOTELKEEPER'S LIEN, **79.**
HYPOTHEC (*see* LANDLORD)—
Landlord's, **76.**
Hypothec Abolition Act, **76.**
In case of small dwellings, **77.**

IMPRISONMENT—
For debt, *44 et seq.*
For failure to give information, etc., to trustee, **21.**
Warrant for delivery of bankrupt for examination, **24.**
For refusal to submit to examination, **25.**
For fraud, **89,** *32.*
Warrant "*in meditatione fugæ*," *44.*
Warrant for, under obligation *ad factum præstandum, 44.*
INCOME TAX (*see* RATES AND TAXES)—
Preference for, **85.**
INDEMNITY—
Bankrupt entitled to, out of damages recovered, **69.**
Trustee should get, before undertaking contracts and litigations, **71.**
INDUCIÆ—
Of citations, *4.*
INFEFTMENT, **22.**
INHIBITIONS, **16, 21, 22, 83.**
INNKEEPER'S LIEN, **79.**
INSOLVENCY—
General definition, **5.**
Evidence, **5.**
Practical and absolute, **5, 58.**
Insolvent debtor holds his estate in trust, **5.**
Onus of proof in action of reduction of gratuitous alienation, **8.**
Knowledge of, or collusion, **8, 9.**
Continuous, **8, 9.**
Fraudulent preference, **9.**
Insolvency under Bankruptcy Act, **58.**
Termination of sequestration where mistake as to, **60.**
Goods bought on credit after, **68.**
Post-nuptial settlements during, **74, 75.**
Certain actions after, are criminal, **89, 90.**
INSPECTION—
Of Sederunt Book, **51.**
Of process in summary sequestration, **92.**
INSURANCE—
National, preference for contributions, **86.**
Workmen's compensation, claims by workmen, **67, 86.**
Marine broker's lien over policies, **79.**
Policy of deceased undischarged bankrupt, **70.**
Of bankrupt's life, **70.**
Bankrupt must submit to medical examination, **71.**
Policy in favour of wife or children, **74.**
INTERDICT—
By creditor, of trustee paying dividend, **24, 39.**
INTEREST (*see* DISCOUNT)—
In sequestration, **18, 39, 40.**
Not due unless contracted for or *ex lege*, **18.**
On bond, preference for, **83,** *18.*
On bills of exchange, **18, 39.**
Out of surplus in sequestration, **45.**
Penal, in sequestration, **47.**
INTERIM POSSESSION (*see* ESTATE, PRESERVATION, LORD ORDINARY, SHERIFF), *28.*

Intimation (*see* Notice)—
Of act and warrant, **21, 69, 70.**
Invalidity—
Objection to claim on ground of, of voucher, **41.**
Of oath, **41.**
Invecta et illata, **76.**
Inventory—
By trustee in sequestration, **23,** *11.*
Form of, *63.*
To be lodged by judicial factor, *48, 51.*
Irish Courts—
Aid in carrying out orders, **24, 26.**
Transfer of sequestrations to, **59.**
Registration of orders of, *54.*
Irish Estate —
Vesting of, **67,** *15.*
Transfer of process where principally, *6.*

Judicial Factors—
On a deceased's estate, under B.A., s. 163, **13, 28,** *27, 51.*
Petition for sequestration takes precedence to petition for, **13.**
Pending sequestration, **13, 16,** *3.*
Form of petition, *52.*
Act anent, *47.*
Inventory lodged by, *48.*
Successor to factor deceased, *48.*
Caution by, *50.*
Interim appointment, *51.*
Discharge of, *52.*
Judicial Sale—
Of heritage, **36.**
Jurisdiction (*see* Lord Ordinary, Sheriff)—
Grounds of, in sequestration, **12, 91.**
Jus Crediti—
Definition, **71.**
None under a testamentary deed, **74.**
If *jus crediti* constituted, provisions in favour of children are valid against trustee, **75.**
Jus Mariti—
Effect of, on bankrupt husband's trustee's claim, **73.**

Labourer. *See* Wages.
Landlord—
Hypothec of, **76, 77, 78,** *18.*
Saved by statute, *18.*
Landlord—*continued.*
Debts preferable to, **78, 84, 85.**
Hypothec preferred to certain privileged debts, **77.**
Sequestration to make hypothec effectual, **77.**
Hypothec covers goods sold by bankrupt but undelivered, **77.**
No preference apart from hypothec, **76.**
Must produce lease, **40.**
Claim to future rent is not contingent claim, **45.**
Trustee selling goods subject to, becomes personally liable for rent, **71.**
Hypothec covers property to appearance belonging to tenant, **77.**
Land Tax—
Preference for, **85.**
Latent—
Partner must notify trustee, **25.**
Transactions, onus of proof shifted, **8.**
Law Agent—
Hypothec of, **78.**
Lien of, **83.**
Cannot purchase estate, **38.**
Taxing account of, **46, 94,** *26, 30, 69.*
Account must be examined by trustee, **46.**
Must only be employed on strictly legal matters, **46,** *62.*
Commissioners' duty to examine account of, **46,** *69.*
May get decree for costs in own name, **78.**
Where a commissioner he cannot charge, **46,** *69.*
Law Expenses. *See* Law Agent.
Lease—
Must be produced by landlord claiming, even in case of tacit relocation, **40.**
Letters—
Bankrupt's warrant to deliver to Sheriff-Clerk or trustee, **16, 22,** *33.*
Liens—
General, **79.**
Special, **78.**
Seller's, **67.**
Law agent's, **83.**

LIENS—*continued.*
Right to compel exhibition of subject of, **83.**
Trustee, for expenses and fee, **98, 101, 103.**
LIFE INSURANCE. *See* INSURANCE.
LIMITATION. *See* PRESCRIPTION.
LIQUID DEBT—
Definition, **13.**
LIQUIDATOR—
May challenge gratuitous alienations and fraudulent preferences, **8, 9.**
LITIGATION—
Costs and liability, **44, 71, 99.**
LOAN—
To partnership at varying interest, postponed ranking, **45.**
By wife to husband postponed, **45, 72.**
But not if to husband's firm, **45.**
Furniture on, hypothec of landlord, **76, 77.**
LONDON GAZETTE—
Notice in, **17.**
LORD ADVOCATE—
May prosecute bankrupt, **54, 90,** *32.*
Also trustee and commissioners, **57.**
Trustee and Accountant to report offences to, **90.**
LORD ORDINARY
Review of judgments of, *28.*
May grant warrant of apprehension, **24.**
May grant warrant for delivery of bankrupt if in custody, **24.**
May award additional allowance to bankrupt, **29.**
May order meeting to be called, **30.**
Grants warrant for distribution of proceeds of heritage sold, **38.**
Reference to, of trustee's commission, **48.**
May alter periods for dividends, **50.**
Petition to, by bankrupt for discharge, **52.**
Petition to, by trustee for discharge, **55.**
Petition to, for removal of trustee, **56.**
May issue warrant for meeting to elect new trustee, **56, 57.**
May remove commissioner, **57.**
Petition to, for recall of sequestration, **58.**
LORD ORDINARY—*continued.*
May sist sequestration where arrangement proposed, **60.**
May approve composition, **64. 65.**
Appeals in summary sequestration, **92.**
May provide for possession of estate pending appeal to House of Lords, *28.*
LOSSES—
Fictitious to account for deficiency, **90.**
LUGGAGE—
Hotel-keeper's lien over, **79.**

MAILLS AND DUTIES—Action of, **81.**
MAJORITY OF CREDITORS (*see* VOTING, QUORUM)—
Computation of, **32, 53,** *15.*
To approve allowance to bankrupt, **29.**
To instruct calling of a meeting, **30.**
To approve sale by private bargain, **37.**
Concurrence of Accountant conclusive evidence, **37.**
Written consents may be got, **37.**
To purchase securities, **36.**
To sell whole estate, **51.**
To discharge bankrupt, **53.**
To remove trustee, **56.**
To remove commissioners, **57.**
To petition for recall of sequestration, **59.**
To approve deed of arrangement in sequestration, **60.**
To approve composition, **63, 66.**
For prosecution of fraudulent creditor, **90.**
MANAGING DIRECTOR—
No preference, **85.**
MANDATE—
To apply for sequestration, **13.**
To trustee under trust deed to do so, **97.**
MANDATORY—
Trustee or partner should not be, **31.**
May vote, *9.*
May vote though creditor present, *9.*
Must produce mandate, **31,** *9.*
Of deceased may apply for sequestration, **13.**
May be commissioner, **20,** *11.*

MANDATORY—*continued.*
But *ipso facto* vacates office on recall of mandate, **58,** *11.*
Signs petition for sequestration, **97.**
MANUFACTURER'S LIEN, **78.**
MARINE INSURANCE BROKER'S LIEN, **79.**
MARRIAGE CONTRACT—
Effect on bankruptcy, **8, 74.**
Effect under Married Women's Property Act, **73.**
MARRIED WOMEN—
Dispositions in favour of, by husband, reducible, **8, 74.**
Money lent by husband to, **45, 72.**
Or immixed with his, **45, 72.**
Entitled to benefit of security held, **45.**
Loan by, to husband's firm not postponed, **45.**
Furniture transferred to husband's house not immixed, **72.**
Claim for proceeds of property sold by husband, **73.**
Claim for enhancement of husband's stock in trade, **73.**
Entitled to aliment out of her property claimed by husband's trustee, **73.**
Insurance in favour of, **74.**
Personal earnings of, **73.**
Property of, in sequestration of husband, **72.**
MARRIED WOMEN'S PROPERTY ACT—
Effect of, **72, 73.**
MEETINGS (*see* NOTICE, MAJORITY, VOTING, MINUTES, QUORUM, etc.)—
By whom called, **30, 92,** *14.*
First statutory meeting, **17, 18.**
Preses, **17.**
Clerk, **18.**
Adjournment thereof, **17.**
Second statutory meeting, **29, 91,** *14.*
To devolve estate on new trustee, **19.**
Of commissioners, **46, 92.**
To sell whole estate, **50.**
To discharge bankrupt, **52.**
To discharge trustee, **55.**
Certificate when no creditor attends, **55,** *63.*
To remove trustee, **56.**
To elect new trustee or commissioner, **56, 57, 58.**
MEETINGS—*continued.*
To approve private sale of heritage, **37.**
To remove commissioner, **57.**
To approve arrangement with creditors, **60.**
To approve composition, **63, 64, 66, 104.**
General rules, **30.**
Preses of, **31.**
Voting at, **31,** *8.*
Adjournment of, **31,** *15.*
Failure to hold on due date, **30.**
When notice of, not required, **30,** *15.*
Minutes, **20, 30.**
In summary sequestration, *31.*
MERCANTILE FACTOR'S LIEN, **79.**
MIDDLEMAN—
Goods in hands of, **68.**
MINISTERS' WIDOWS' FUND—
Preference for rates, **86.**
MINOR—
Prescription of claims by, **41.**
MINUTES—
Of meetings in sequestration, **20, 30, 31.**
Approving of private sale of heritage, **38.**
Approving discharge of bankrupt, **52.**
Are evidence, **53.**
MOURNINGS—
Cost of, preferable, **84.**
MUTILATION—
Of books, etc., a criminal offence, **89.**
MULTIPLEPOINDING—
By trustee to obtain discharge, **103.**

NATIONAL INSURANCE—
Preference for, contributions, **86.**
NEWSPAPER—
Notice *in re* sale of estate, **51.**
Notice *in re* deed of arrangement, **61.**
Notice for claims by judicial factor, *51, 53.*
NOBILE OFFICIUM—
Definition of, **60.**
Appeal to, **17, 60.**
NOTICE IN SEQUESTRATION (*see* GAZETTE, ADVERTISEMENT), **30.**
To bankrupt to attend when letters opened, **16.**
Of trustee's appointment, **23.**
To bankrupt's debtors, **69.**

NOTICE IN SEQUESTRATION—*continued.*
Of bankrupt's examination, **23, 92,** *29.*
Of award of sequestration, **17.**
Of second statutory meeting, **23, 24, 92.**
Of last date for claims, **24.**
Of second meeting in case of deceased debtor, **29.**
Of meetings generally, **30,** *14.*
Of appeals against resolution to bankrupt of valuation, **31.**
Of contingent claim, **42.**
Of trustee's commission, **47, 48.**
Of dividends, **47, 48, 49, 94,** *20.*
Of sale of estate, **50, 51.**
Of deed of arrangement, **60, 62.**
Of composition contract, **30, 63, 66.**
Must apparently be to all creditors without exception, **63.**
To creditors *re* bankrupt's discharge, **53.**
Re trustee's discharge, **55.**
Also to Accountant, **55.**
Notice to trustee of petition for removal, **56.**
Of petition for recall of sequestration, **59.**
To creditor of bankrupt's intention to challenge preference, **62.**
Certain notices to be sent to every creditor, **63.**
Of intention to sell unpaid goods, **68.**
To middleman of sale, **68.**
Of retiral of partner, **89.**
Notice of dividend, **47,** *51.*
Notice of rejection of claims, **47, 92,** *29.*
Of objections to trustee's adjudication, **44, 92,** *29.*
Re removal of commissioners, **70.**
By bankrupt of *acquirenda*, **69.**
Of intention to carry out bankrupt's contracts, **71.**
Under trust deed, **98, 99.**
Under composition contract, **104.**
Under judicial factory, *51 et seq.*
Service of, **15, 30.**
NOTOUR BANKRUPTCY, **6, 7.**
Act for making, *41.*
Constitution, **6,** *1.*
NOTOUR BANKRUPTCY—*continued.*
Commencement of, **6,** *2.*
Prerequisite to sequestration, **12, 13, 91,** *2.*
Effect on trust deed, **100.**
Continuance of, **6.**
Of private partnership, **6, 7,** *2.*
Cuts down preferences, **7, 9,** *2.*
Equalises arrestments and poindings, **7, 10, 81,** *2.*
Effect of reconstitution of, **6, 10,** *2.*
Diligence granted to recover evidence, **14.**

OATH (*see* CLAIM)—
Contents of, **13, 14, 18.**
How to be taken, **13.**
Of creditors, **13, 31, 39,** *7.*
Of bankrupt, **24, 25, 54, 65,** *14, 24.*
Petitionary, **13,** *4.*
Defective, **13.**
Rectification of, **13, 36, 42, 43,** *7.*
Of credulity by representative of foreign creditor, **14,** *4.*
In case of corporation, **14,** *4.*
Of credulity by agent of creditor *incapax*, **14,** *4.*
Scrutiny of, **18.**
Must state securities and co-obligants, **31, 39.**
Objection on ground of invalidity, **41.**
Trustee must return imperfect, for correction, **43.**
In re preferable debts not necessary, **84.**
Penalty on creditor making a false, **90.**
Where vouchers not in creditor's possession, *7.*
Not to supersede evidence, *8.*
Of debtor may elide prescription, **41.**
OBJECTIONS—
To petition for sequestration, **15.**
On death, etc., of objector, another may be sisted, **12.**
To trustee nominated, **19.**
To claims, **19, 40, 93,** *29.*
To petition for bankrupt's discharge, **53.**
To petition for trustee's discharge, **55, 56, 96,** *31.*
To deed of arrangement, **60, 61.**
To composition offer, **64, 65.**

OBJECTIONS—*continued.*
To trustee's deliverance on claims, **44, 92,** *29.*
Disposed of by Sheriff or Lord Ordinary, **44, 93,** *30.*
To scheme of division prepared by judicial factor, *52.*
OBLIGANTS. *See* CO-OBLIGANTS, CAUTIONERS, CAUTIONARY OBLIGATIONS, SECURITIES.
ONEROUS CONSIDERATION—
Meaning of, **8.**

PAPERS—
Lien over client's papers, **79.**
PARTNERSHIP—
Nominal, **88.**
Creditors, voting and ranking of, **34, 88,** *8, 9.*
Notour bankruptcy of, **7.**
Compensation of debts in case of, **79.**
Lenders of money to, **45.**
Charge on partner for partnership debt, **7.**
Sequestration of, **12, 14.**
Domicile of, **12.**
Oath by partnership creditor, **14.**
Separate account kept by trustee, **23.**
Latent partner must notify trustee, **25,** *14.*
Creditor votes on partner's estate under deduction of firm's dividend and relief against co-partners, **34,** *8, 9.*
Voting where more than two partners, **35.**
Partner with trustee or law agent cannot purchase estate, **38.**
Ranking in case of sole partner, **80, 88.**
Trustee places value on creditor's claim against, **88.**
Ranking of partners *inter se*, **89.**
Ranking of firm's trustee for partner's overdraft, **88.**
Position of retiring partner, **89.**
Termination of liability of partner, **89.**
Deceased partner's estate not liable for posterior debts, **89.**
Incoming partner not liable for prior debts, **89.**
PAY. *See* WAGES.

PAYMENT—
Prior to sequestration must be deducted, **40.**
To obtain consent to discharge is null and void, *25.*
To creditor by friend to obtain consent invalidates deed of arrangement, **61,** *25.*
Also composition contract, **64,** *25.*
Such are recoverable, *25.*
Of composition, **66, 105.**
By bankrupt after sequestration, *17.*
PENALTIES—
Imprisonment for failure to disclose information, **21.**
Sundry penalties, **89, 90.**
For refusal to submit to examination, **25,** *14.*
On latent partner for failure to disclose, **25,** *14.*
On trustee for not lodging money in bank, **47,** *12.*
For default in making annual return, **50.**
For collusion between bankrupt and creditor, **52,** *25.*
For failure to notify as to *acquirenda*, **69.**
On trustee under trust deed for failure to have accounts audited, **100.**
For misconduct under Judicial Factors Act 1889, *48.*
PENSION—
Of bankrupt may be claimable, **69.**
PERIODS—
How reckoned, **29, 61.**
PETITION—
For sequestration, **12, 100, 101,** *2.*
For second sequestration may be lodged notwithstanding deed of arrangement, **61.**
Who may, **12, 13,** *2.*
In Sheriff Court, **12, 14.**
In Court of Session, **12, 14.**
New petitioner may be sisted, **12, 58,** *5.*
Defective petitionary oath, **13.**
Citation follows, **14.**
Petitionary oath good for voting, **41.**
Where petitioner disclaims, **60.**
Non-acceding creditor under trust deed may, **100, 101.**

PETITION—*continued.*
Acceding creditor may, **102.**
Truster may, **101.**
Trustee may, **101.**
Re estate improperly included in sequestration, *19.*
Interrupts prescription, *17.*
Qualification of creditor, **13,** *2.*
Productions relative to, **13, 14,** *3.*
Form of, **14,** *3.*
Objections to, **15.**
Against resolutions of creditors, **31.**
Re scheme of ranking on heritage, **38.**
Against trustee's commission, **48.**
By bankrupt for discharge, **52.**
May be renewed, **52.**
By trustee for discharge, **55,** *25.*
For removal of trustee, **56, 57, 102.**
Re *acquirenda,* **69,** *16.*
To recover heritage of deceased debtor, **22.**
To appoint date for meeting omitted to be held, **30.**
To compel trustee to account, **66.**
For portion of alimentary funds, **70.**
For judicial factor, **13,** *27, 51.*
Form thereof, *52–3.*
Claiming trust moneys, **72,** *16.*
Expenses of, preferable, **84,** *6.*
For removal of trustee under trust deed, **102.**
Or for new trustee, **102.**
For recall of sequestration, **58.**
For summary sequestration, **91,** *28.*
PLEDGE—
Security by way of, **76.**
Fraudulent pledging of unpaid goods, **90.**
POINDING (*see* DILIGENCE)—
Of moveables, **7, 10, 82, 83.**
Constitution of notour bankruptcy by, **6.**
Equalisation of, **7, 10, 11.**
Sequestration equivalent to, **10, 81,** *17.*
Cut down by sequestration, **10.**
Preference for expenses of, **10,** *17.*
Creditor producing liquid grounds of debt ranks equally with, **10.**
Preference in respect of, **81.**
Diligence in England not equalised, **81.**
POINDING—*continued.*
May be effected after sequestration, **83.**
Of the ground, **81, 83,** *18.*
POLICIES. *See* INSURANCE.
POOR RATES—
Preferable, even to bondholder, **85.**
POST-NUPTIAL SETTLEMENTS—
Effect of, in bankruptcy, **8, 74.**
For wife, **74.**
For children, **75.**
POST OFFICE DUES—
Preference for, **84.**
Preferable to landlord, **85.**
POSTPONED CLAIMS—
Do not entitle to vote for trustee, **19.**
Ranking of, **45.**
Preferable on surplus to interest on ordinary claims, **45.**
PREFERABLE DEBTS—
May be paid forthwith, **38, 44, 84,** *19, 52.*
Deduction of securities held for, **40.**
Ranking of, **44,** *19.*
Oath *in re,* may be dispensed with, **84,** *19.*
Preference *inter se,* **84,** *19.*
Under composition contract, **62.**
Workmen's compensation, **67, 86.**
Expenses of diligence, **83, 84,** *19.*
In respect of incomplete diligence, **10, 84.**
Sequestration expenses, **62, 84.**
Trustee's remuneration, **84.**
Ministers' Widows' Fund rates, **86.**
Deathbed expenses, **84,** *19, 52.*
Privileged debts, **84,** *19.*
Wages, **85,** *19.*
National insurance, **86,** *19.*
Rates and taxes, **84, 85, 99,** *19.*
Telephone dues, **85.**
None at common law, **99.**
PREFERENCE (*see* FRAUDULENT PREFERENCE AND ALIENATIONS)—
Challenge of fraudulent, **8, 9, 61, 64, 100,** *39, 41.*
Of law agent with lien, **83.**
Of arresting creditor, **82.**
Of creditor poinding the ground, **83.**
To inhibiting creditors, **83.**
Bankrupt may stipulate for right to challenge, **62.**

PREFERENCE—*continued.*
In respect of arrestment and poindings, **81.**
Secret, a ground of reduction of trust deed, **101.**
And composition contract, **105.**
Creditors, **45, 67, 75.**
Of ancestor's creditors, **80,** *17.*
PREMIUMS—
Insurance, refund of, by assured to bankrupt estate, **74.**
On bond of caution chargeable, **20,** *51.*
PRESCRIPTION, **41.**
Of cautionary obligation for composition, **62.**
Runs from date of last debit entry in account, **41.**
Petition for sequestration interrupts, **41,** *17.*
Of cautionary bond for judicial factor, **41.**
Of claims against judicial factor, **41.**
PRESERVATION OF ESTATE—
Pending sequestration, **16,** *3.*
Warrant of search, **16,** *3.*
Warrant to postmaster to deliver letters, **16.**
Judicial factor for, **16,** *3.*
Court will grant necessary orders, **16,** *3.*
By lodging abbreviate in register of inhibitions, **16.**
While sequestration sisted, **60,** *5–6.*
Pending appeals or complaints, *28.*
PRESES—
At first statutory meeting, **17.**
Reports to Sheriff, **20.**
Of meetings generally, **31.**
PRIVATE SALE—
Of heritage, **37.**
Productions to Accountant of Court, **38.**
PRIVILEGED DEBTS (*see* PREFERABLE DEBTS)—
Preference *inter se*, **84.**
May be paid forthwith, **38, 83.**
PROPERTY TAX—
Preference for, **85.**
PROTEST OF BILL—
Charge may proceed on, **6.**
PUBLIC SALE—
Of heritage, **37.**
PUNISHMENT—
Of fraudulent debtors, **89,** *32.*
Of fraudulent creditors, **90,** *32.*
Proceedings may be taken under B.A. or any other Act or common law, *32.*
PURCHASE—
Of goods on credit after insolvency, **68, 90.**
Who may, estate, **38.**
Of creditor's security, **36, 42.**
Price must be tendered when demand made, **42.**
Of goods on credit by undischarged bankrupt, **90.**

QUORUM—
Of commissioners, **20.**

RANKING (*see* CLAIMS, DEBTS, CREDITORS)—
Of claims, **43, 44, 67, 75–88, 92, 99,** *7, 9.*
Deductions for, **40,** *9.*
Order of, **44.**
No double, **42, 87.**
Trustee fixes, **43, 93.**
Under trust deed, **99, 100.**
Of diligences, **10, 82–84.**
Of co-obligants on principal debtor's estate, **18,** *8.*
Of cautioners, **18, 42, 86, 87.**
Of partnership creditors, **88, 137.**
Of partners *inter se*, **89.**
On proceeds of heritage, **38.**
Of workmen for compensation, **67.**
State of, **49, 93–4.**
RATES AND TAXES—
Imprisonment for, *44, 45.*
Preference for, **84, 99.**
In competition with diligence, **84.**
Or landlord, **77.**
Limit of preference, **84–5.**
RECALL—
Of sequestration, **58,** *5.*
Practical insolvency a bar to, **58.**
Of mandate of commissioner, **58.**
RECEIVING ORDER—
In England or Ireland constitutes notour bankruptcy, **6.**

REDUCTION—
Of trust deed, **100.**
Of fraudulent preferences and gratuitous alienations, **8, 9, 101.**
Of composition contract, **105.**
REGISTER—
Of sequestrations, **21, 54, 56, 60, 62, 65.**
Form of, *36.*
Of inhibitions and adjudications, abbreviate for, **16, 21, 22, 54.**
REGISTRATION—
Of first deliverance, **15.**
Abbreviate for register of inhibitions and adjudications, **16, 21, 22, 54, 60, 62, 65,** *6.*
Renewal of, *7.*
Of act and warrant, **21,** *12.*
Of act and warrant where real estate furth of Scotland, **21.**
Where necessary to complete title, **21.**
Of inventory and valuation, **23,** *12.*
Of deliverance discharging bankrupt, **54, 55.**
Of deliverance discharging trustee, **56.**
Of deliverance recalling sequestration, **60.**
Of deliverance in case of deed of arrangement, **62.**
Of deliverance in case of composition contract, **65.**
REJECTION—
Of goods by bankrupt, **68.**
Of claims, **43, 93.**
RELIEF—
Deduction in respect of bankrupt's right of, **32, 33, 34.**
Of partners *inter se*, **34, 89.**
Of cautioners *inter se*, **86, 87.**
Trustee entitled to relief against estate for outlays, **71.**
REMUNERATION. *See* COMMISSION.
RENT—
Hypothec for, **76, 77.**
Lease must be produced, **40.**
Liability for future, not a contingent claim, **45.**
Trustee liable for, if sells goods with consent, **71.**
Prescription of, **41.**
Attachment of, by action of maills and duties, **81.**
RENTAL—
Prepared by bankrupt, **18.**
Form of, *64.*
REPAIRS—
Hypothec over ship for, **78.**
Lien over ship for, **79.**
REPORT (*see* ANNUAL RETURN)—
To Sheriff by preses, **20.**
By commissioner to creditors, **20.**
By trustee to second meeting, **29,** *58.*
On bankrupt's conduct, **52,** *61.*
When prepared, **52.**
When demandable, **52.**
No fee for, **52,** *61.*
Must be referred to in creditor's consent, **53.**
By Accountant *re* bankrupt, **53.**
Also *re* trustee, **55.**
To Lord Ordinary or Sheriff *re* proposed arrangement, **60.**
Of composition to Lord Ordinary or Sheriff, **64.**
To Accountant in summary sequestration, **95,** *31.*
RE-SALE—
Right of, **67.**
RESTITUTION—
Of goods by trustee, **68.**
Of goods to trustee, **68.**
Of articles subject to landlord's hypothec, **77.**
RETURN. *See* ANNUAL RETURN.
RETENTION. *See* LIEN.
ROYALTIES—
Trustee must pay as condition of claiming copyrights, **72.**

SALARIES (*see* WAGES)—
Preference for, **78, 85.**
Of bankrupt not claimable, **69.**
Of Government office may fall partly into sequestration, **69.**
Preferable to landlord, **78.**
And to diligence, **85.**
SALE—
Of heritage in sequestration, **36, 37, 38,** *17.*
Of whole estate, **50,** *21.*
Of book debts within twelve months incompetent, **50.**
Advertisement of, **51.**
Sale of Goods Act, effect in bankruptcy, **67.**

SALE—*continued.*
Re-sale, **68.**
Constructive delivery of goods, **68.**
Rejection of goods, **68.**
Of goods undelivered, **67.**
Seller's rights against trustee, **68.**
Lien of unpaid seller, **68.**
Right of stoppage *in transitu*, **68.**
To bankrupt on credit while insolvent, **68.**
By bankrupt after sequestration, **69.**
Of goods by trustee without landlord's consent, **71.**
Of wife's property by bankrupt husband, **73.**
SALVAGE PARTY'S LIEN, **79.**
SAVINGS BANK—
Funds in sequestration, **72.**
SECURITIES—
Collateral, deduction of, **32.**
Over bankrupt's estate, deduction of, **18.**
Catholic and secondary, **76.**
SCHEME OF DIVISION—
Of proceeds of heritage sold, **38.**
Interim, **38.**
Of dividends in sequestration, **49.**
In case of judicial factory, *52.*
SCHOOL RATES—
Preferable even to bond-holder, **85.**
SEAMEN'S HYPOTHEC, **78.**
SECONDARY CREDITOR—
Ranking of, **76.**
SECRETARY—
Preference for salary, **85.**
SECURITY—
Various kinds of, **75–83.**
Held by preferable creditor, deduction thereof, **40.**
Co-obligant or cautioner must account to trustee for, **42.**
Uplifted by bankrupt after sequestration, **69.**
Fraudulent, may be reduced, **9.**
What securities are valid, **9.**
Obligation to grant, indefinite, **9.**
Completion after notour bankruptcy, **9.**
Date of deed, meaning, **9.**
To be stated by petitioner, **13.**
To be stated in oath, **18, 31,** *8.*
Deduction of, for voting, **32, 33, 34,** *8.*
SECURITY—*continued.*
Deduction of, for ranking, **40,** *9.*
Catholic and secondary, **76.**
Not deducted at common law, **99.**
Purchase of, **36, 42,** *9.*
Price must be tendered, **42.**
Valuation of, **18, 31, 36, 39, 40, 42,** *8.*
Valuation of, does not bind creditor to retain, **39.**
Valuation of, in grant of reversion, **40.**
Debtor bound to accept reconveyance of, **39.**
Revaluation of, **36, 42,** *9.*
Challenge of, **9, 10, 62, 74.**
Those not challengeable, **76.**
Over property requiring infeftment, **22.**
Granted for loan by wife, **45.**
SEDERUNT BOOK—
Trustee must keep, **12.**
Claims to be entered, **18, 39.**
Bankrupt's state of affairs entered, **18.**
Also statutory oath, **25.**
Bankrupt's answers to questions put privately by trustee should be entered, **27,** *58.*
In case of composition arrangement, **52.**
Report on bankrupt's conduct entered, **52,** *61.*
Contents of, **47, 51,** *60.*
Confidential documents, **51.**
Submitted to creditors, **51, 55.**
Sent to Accountant, **51, 55, 66, 95.**
Open for inspection, **51.**
Continuation of last annual return entered in, **51, 55.**
Certificate in event of no creditor attending meeting engrossed in, **55.**
Recall of mandate of commissioner, entered in, **58.**
Bond of caution for composition engrossed in, **63.**
Report of composition offer engrossed in, **64.**
SEQUESTRATION—
For rent, **77.**
Sale under, constitutes notour bankruptcy, **6.**

SEQUESTRATION (*see* SUMMARY SEQUESTRATION, ADJUDICATION, CLAIMS, DIVIDENDS, GAZETTE, MEETINGS, NOTICES, PETITION, RANKING, SECURITIES)—
Constitutes notour bankruptcy, **6.**
Equivalent to arrestment and poinding, **10, 81–2.**
Petition for, **12,** *2.*
Dates from first deliverance, **14,** *6.*
Interim preservation of estate, **16,** *3.*
Award of, **16, 92,** *4, 5.*
Competing, **15.**
Recall of, **58,** *5, 6.*
Proceedings pending recall, **58,** *5.*
Ground of recall, **58.**
Ceases to be a depending sequestration five years after last proceedings, *27.*
Termination *ex nobile officio*, **60.**
Sist of, **60.**
Remit of later to earlier, **15,** *3.*
Transfer of, to another Court, **15,** *3.*
Proceedings in one Court only effectual, **15.**
Trustee's title in, **67.**
Opposing interest of trustee in another, **19.**
Not to fall asleep, *6.*
Expenses of, **53, 64, 84.**
First statutory meeting in, **17.**
Meetings, generally, in, **30.**
Second statutory meeting in, **29.**
Examination of bankrupt in, **23, 24, 25, 26, 27, 28, 92.**
Allowance to bankrupt in, **29.**
Discharge of bankrupt in, **52.**
Removal of trustee in, **56.**
Removal of commissioners, **57.**
Discharge of trustee in, **55.**
Adjudication on claims in, **43.**
Dividends in, **46, 47, 48, 49.**
Of deceased's estate, **29,** *2.*
Order of ranking in, **44.**
Auction sale of whole estate, **50.**
Deed of arrangement, **60,** *5.*
Composition contract in, **62.**
Annual return to Sheriff, **50.**
Deed of arrangement not a bar to, **61.**
Goods sold by bankrupt after sequestration, **68.**

SEQUESTRATION—*continued.*
Debts collected by bankrupt after sequestration, **69.**
Bills uplifted by bankrupt after sequestration, **69.**
Payments prior to, are deductible, **40.**
Superseding trust deed, **101.**
Or composition contract, **106.**
Does not free cautioner for composition, **106.**
SET-OFF (*see* COMPENSATION), **79.**
SETTLEMENTS. *See* POST-NUPTIAL AND ANTE-NUPTIAL.
SERVANTS—
Preference for wages, **85.**
Domestic, **85.**
Farm, **86.**
SHERIFF—
Annual return to, of sequestrations, **50.**
Agents in Court of Session may be agents before the Sheriff, *28.*
May provide for interim possession, *28.*
Review of judgments of, *28–30.*
Transfer of process, **15.**
Remit to, **17.**
Transmission of process to Sheriff-Clerk, **17.**
Presides at first meeting on requisition, **17.**
Disposes of creditor's objections to trustee, **19.**
Appoints trustee, **19.**
Lodgment of objections with, **20.**
Clerk writes minutes of meeting, **20.**
Bond of caution lodged with, **20.**
Issues act and warrant, **21.**
And sends copy to Accountant, **21.**
Fixes date for bankrupt's examination, **23, 92.**
May grant warrant of apprehension, **24.**
May grant warrant for delivery of bankrupt if in custody, **24.**
May order third parties to produce documents, **26.**
May award additional allowance to bankrupt, **29.**
May order meeting to be called, **30.**
Grants warrant for distribution of proceeds of sale of heritage, **38.**
May value contingent claims, **42.**

SHERIFF—*continued.*
Appeals to, *re* trustee's adjudication, **44, 92.**
Appeals to, *re* trustee's commission, **48.**
May alter periods for dividends, **50.**
Reports to Accountant of Court, **50.**
Petition to, for discharge by bankrupt, **52.**
Clerk sends extract deliverance of bankrupt's discharge to Accountant, **54, 65.**
Petition to, by trustee for discharge, **55.**
Issues warrant for meeting to elect new trustee, **56.**
Petition to, for removal of trustee, **56, 57.**
May remove commissioner, **57.**
May sist sequestration, **60.**
May order summary procedure in sequestration, **92,** *29.*
Disposes of objections to petition, **92,** *30.*
Judgment final "in fact," but may be appealed "in law," *30.*
SHIP—
Hypothec over, for wages, **78.**
Lien over, for repairs, **79.**
SHIPOWNER'S LIEN, **79.**
SISTING—
Of sequestration, *5.*
Of new petitioner, *5.*
SMALL DWELLINGS—
Limitation of landlord's hypothec, **77.**
SOLE PARTNER—
Ranking, **88.**
SPES SUCCESSIONIS—
Definition of, **70.**
Included by bankrupt in state of affairs, **18.**
Considered *in re* composition offer, **64.**
Trustee may insure bankrupt's life *in re*, **71,** *12.*
Created by testamentary deeds, **74.**
STAMP DUTY—
Exemptions in bankruptcy, **21,** *33.*
STATE OF AFFAIRS (*see* ACCOUNTS)—
By bankrupt, **18,** *12.*
Failure to lodge, **89,** *12, 32.*
Signing of, **25.**
STATE OF AFFAIRS—*continued.*
Correction of, **25,** *14.*
To be lodged with petition for summary sequestration, **91, 177,** *29.*
Prepared by trustee, **29, 63.**
STATUTE. *See* ACT.
STATUTORY OATH—
By bankrupt, **25.**
STOCK EXCHANGE—
Losses on, discharge refused, **52.**
STOCK IN TRADE (*see* GOODS, HYPOTHEC)—
Enhanced by wife's exertions, **73.**
Landlord's hypothec over, **76.**
STOCKBROKER—
Claim by, on speculative account, **41.**
STOPPAGE IN TRANSITU, **67.**
SUCCESSION. *See* SPES SUCCESSIONIS, VESTING, VESTED RIGHTS.
SUMMARY SEQUESTRATION—
Primary condition, **91,** *28.*
Petition, **91,** *28.*
State of affairs to be lodged, *29.*
Citation, **91,** *29.*
Award of, **92,** *29.*
When competent in Court of Session, *29.*
Judge may make no order as to summary procedure, **92,** *29.*
Lodgment of claims, **92,** *29.*
Examination of bankrupt, **92,** *29.*
Second statutory meeting, **92,** *29.*
First dividend, **94,** *29, 30.*
Subsequent dividends, **94,** *30.*
Report to Accountant in, **94,** *31.*
Discharge of bankrupt, **95,** *31.*
Discharge of trustee, **95,** *31.*
Ordinary rules to have effect so far as applicable, **91,** *28.*
Dispensation with further procedure in, **93,** *30.*
SUPERIOR—
Hypothec of, **76.**
Cannot raise action of maills and duties, **81.**
SURPLUS—
In sequestration, claims thereon, **45.**
Under trust deed, **102,** *26.*
Under judicial factory, *52.*

TACIT RELOCATION—
Landlord must produce lease even although tenant possesses by, **40.**

TAXES. *See* RATES AND TAXES.
TELEPHONE DUES—
Preference, **84.**
Preferable to landlord, **85.**
TESTAMENTARY DEEDS (*see* VESTING)—
In sequestration, **71, 74.**
TIME—
How computed under B.A., **29,** *1.*
TITLE (*see* TRUSTEE)—
Act and warrant a complete, *10.*
Completion of, **21, 22, 98,** *29.*
May be made up in name of bankrupt or trustee, **22,** *16.*
But not to validate accretione rights in favour of others, **22,** *16.*
First completed title preferable, **22.**
Trustee may grant conveyances without feudal title or consent of bankrupt, **22, 37,** *16.*
Where made up by successor of deceased bankrupt, **22,** *16.*
Sale where title complicated, **36.**
Radical, in bankrupt, **54,** *15.*
Extent of trustee's, **67.**
To *acquirenda*, completion of, **70,** *16.*
Securities which prevail over trustee's, **75.**
Diligence which prevails over trustee's, **80.**
Of judicial factor by virtue of extract appointment, *49.*
TITLE DEEDS—
Law agent's lien over, **83.**
TOOLS AND IMPLEMENTS—
Exempt from landlord's hypothec, **77.**
TRAVELLERS—
Preference for commission, **85.**
TRUST—
Funds, vesting of, in sequestration, **71.**
Petition claiming funds in sequestration, **71, 72.**
Applied by bankrupt for own behoof, **72.**
TRUST DEEDS—
Extra-judicial, **96.**
Effect of, **97, 100.**
Proof of accession to, **97.**
Reduction of, **100.**
Ranking under, **97.**
Dividends under, **100.**
Diligence in competition with, **101.**
TRUST DEEDS—*continued.*
Where no committee, Accountant supervises, **109,** *33.*
Trustee under, no claim for remuneration, **103.**
Completion of trustee's title under, **98.**
Adjudication on claims under, **99.**
Audit of accounts under, **100,** *33.*
Sequestration rules of ranking may be incorporated, **99.**
Death of trustee under, **102.**
Removal of trustee under, **102.**
Appointment of new trustee, **102.**
Resignation and assumption of trustee, **102.**
Discharge of trustee under, **103.**
Discharge of debtor under, **102.**
Superseding a sequestration, **60.**
May be superseded by sequestration, **100, 101.**
Irrevocable, **98.**
May assign to trustee right to do diligence, **102.**
Trustee under, may challenge fraudulent preferences and alienations, **8, 9.**
TRUSTEE (*see* VESTING, ADJUDICATION, TITLE, COMMISSION)—
Election of, **18,** *9.*
Creditors' objections, **19,** *10.*
Creditors disqualified to vote for, **19,** *9.*
Disqualification of, **18, 19.**
Duties, *11.*
In succession, **19.**
Confirmation of, **20.**
Sheriff's judgment as to objections, **19.**
Liability for expense of competition for office of, **19.**
Meeting necessary to devolve estate, **19.**
Title of, **21, 22, 67, 75, 98.**
Title of, in relation to diligence, **80–83.**
Remuneration of, **47, 48, 64, 84, 93, 100, 102.**
Liable in penal interest, **47.**
Accounts of, **46, 49.**
Accounts, copy to Accountant, **23.**
Separate accounts for firm and partners, **23.**

TRUSTEE—*continued.*
Caution by, **20.**
Act and warrant, **21.**
Inventory by, **23.**
May reduce fraudulent preferences and gratuitous alienations, **5, 6, 74, 105.**
Separate, on firm's and partner's estates, **19.**
Entitled to full assistance from bankrupt, **21.**
May make up title in own or bankrupt's name, **22.**
Amenable to Lord Ordinary and Sheriff, *12.*
Applies to Sheriff to fix diet of examination, **23, 91.**
Should not be a mandatory, **31.**
May purchase creditor's security or claim, **36, 42.**
Dealings with heritage, **37.**
May dispense with oath in case of preferable debts, **38.**
Initials claims and enters in Sederunt Book, **39.**
Values contingent debts and annuities, **42.**
Adjudicates on claims, **43, 92.**
Should not adjudicate if no funds, **43.**
May require further evidence of claim, **43.**
Must draw attention to imperfect oath, **43.**
May compromise or arbitrate, **43,** *28.*
Trustee must not be bank agent, etc., **47.**
Can only draw dividend money as required, **47.**
Cannot take payment to account of commission, **47.**
Cannot charge for clerk's writings, **47.**
Nor for report on bankrupt's conduct, **52.**
May appeal *re* commission, **48, 94.**
May accelerate payment of dividend, **49.**
May claim *acquirenda*, **70.**
And carry out bankrupt's contracts, **71, 98.**
Cannot carry out where there is a *delectus personæ*, **71.**
TRUSTEE—*continued.*
Liable for rent if he sells goods hypothecated without notice, **71.**
Must report offences to Lord Advocate, **90.**
And commissioners fix dividend in summary sequestration, **93.**
Reports to Accountant in summary sequestration, **95.**
Non-acceding creditor under trust deed not bound to discharge, **97, 103.**
Vacancy in office of, may be filled by Court, **96.**
Litigation by, **71, 99.**
Forfeiture of commission by trustee under trust deed, **100.**
Under trust deed must denude in favour of trustee in sequestration, **101.**
Survivor may act although no survivorship clause, **102.**
Securities which prevail over title of, **75.**
Must compel bankrupt to give full list of creditors, **24.**
May claim an equalising ranking on arrested or poinded subjects, **81.**
Under trust deed, no claim for remuneration, **103.**
Censure of, **50, 57,** *27.*
Accounts audited, **46, 64.**
Right to do diligence, **102.**
Report on bankrupt's conduct by, **52.**
Accountant may report on conduct of, *27.*
Bond of caution delivered up to, **56.**
Discharge of, **55, 95, 103,** *11, 25, 31.*
Removal of, **56, 102.**
Death of, **56, 102.**
Furth of Scotland, **56.**
Resigned, **56,** *11.*
Election of new, **56, 102,** *11.*
Lien for expenses and remuneration, **101, 103.**
Under deed of arrangement, must denude in event of subsequent sequestration, **61.**
Personal liability of, **71, 98.**
Liability for expenses, **57.**
May raise an action of multiplepoinding for discharge, **103.**

TRUSTEE—*continued.*
Liable to account, **66, 99, 102, 103,** *12.*
Under trust deed may challenge gratuitous alienations and fraudulent preferences, **8, 9.**
TRUSTEES (TESTAMENTARY)—
Carrying on business, creditors no vote for trustee in sequestration, **19.**
TUTOR—
Prescription of claims by, **41.**

UNAPPLIED BALANCES—
Trustee cannot take, as commission, **47.**
Lodged on deposit-receipt, **55.**
UNDISCHARGED BANKRUPT—
Purchases on credit over £10 criminal, **90.**

VALUATION—
Of estate prior to auction, **50.**
Of securities, **18, 31, 36, 40, 42.**
May be required of each security, **39.**
Does not bind creditor to fulfil obligations attaching, **39.**
Of contingent claims, **42.**
Of annuities, **42.**
Limits cautioner's liability, **42.**
VERBAL CONTRACTS—
Prescription of, **41.**
VESTED RIGHTS—
Carried to trustee, **70, 71.**
VESTING OF ESTATE—
In trustee, **67,** *15.*
Goods purchased but undelivered, **67.**
Goods received on credit after insolvency, **68.**
Goods sold after sequestration by bankrupt, **68.**
Debts and Bills uplifted by bankrupt, **69.**
Acquirenda, **69.**
Spes successionis and contingent rights, **70, 71.**
Uncompleted contracts, **71.**
Copyrights, **72.**
Trust funds, **72.**
Property of bankrupt's wife, **72.**
Dispositions challengeable, **74.**
Ineffectual diligence, **75, 82.**
Effectual diligence, **80.**

VESTING OF ESTATE—*continued.*
Tacit hypothecs, **76.**
Retention and lien, **78.**
Compensation, **79.**
Arrears of aliment vest in trustee, **70.**
Subsisting inhibitions do not prevent, **83.**
Property on gratuitous loan, **77.**
VOTING (*see* MAJORITY, QUORUM, RESOLUTIONS)—
In sequestration, **31, 33–36,** *8.*
In election of trustee, **19,** *9.*
Debts acquired after sequestration no vote in election, *9.*
Special rules, *8.*
Petitioning creditor's oath good for, **41.**
Objections to votes, **19, 40.**
Mandate for, must be produced, **31,** *9.*
Of preferable creditor, **31.**
Deduction of collateral security, **32,** *8.*
Deduction of bankrupt's right of relief, **32,** *8, 9.*
Where more than two partners, **35.**
Purchase of securities when used for voting, **36,** *9.*
Deductions for, **32, 33–36.**
By secured creditor, **33–36,** *9.*
None where voucher not produced, **19, 31, 39.**
In re sale by private bargain, written consent may be got, **37.**
No vote where claim cannot be valued, **42.**
VOUCHER OF DEBT—
Must be produced to entitle to vote, **19, 39.**
In case of rent, **40.**
In case of bank balance, **40.**
Reason for non-production stated on oath, **39,** *7.*
Returnable if desired, **40.**
Invalidity of, **41.**
Prescribed bill is not a good, **41.**

WAGES (*see* SALARIES and PENSIONS)—
Preferable in bankruptcy, **78, 85.**
Preferable to landlord, **77.**
And to diligence, **84.**
Prescription of, **41.**
Compensation for accidents, **67, 85.**
Limit of preference, **85.**

WAGES—*continued.*
Of bankrupt not claimable, **69.**
Of domestic servant in competition with landlord, **78.**
Hypothec for seamen's, **78.**
Lien over commodities for labour spent thereon, **78.**
WARRANT—
Of citation, **14, 15, 91,** *4.*
Service of, on company, **15,** *4.*
Service of, on tutors or curators, **15.**
Service of, by letter, **15.**
To open letters, **16, 22,** *33.*
Of seizure and search, **16,** *3.*
For bankrupt to attend for examination, **23, 43,** *13.*
Of apprehension, **24,** *13.*
For delivery of bankrupt's person if in custody, **24,** *13.*
To imprison for failure to answer questions, **25.**
On third parties to produce documents, **26.**
For examination of parties *re* claims, **43.**
For meeting to elect new trustee, **56.**
To cite witnesses and havers, **93, 96,** *30.*
WIDOWS' FUND—
Rates preferable in sequestration, **86.**
WIFE—
Of bankrupt no vote in election of trustee, **19.**
Dispositions in favour of, by husband, reducible, **8, 74.**
WIFE—*continued.*
Marriage contract not reducible, **8, 75.**
Property or money lent to husband by, **45, 72.**
Or immixed with his, **45, 72.**
Entitled to benefit of any security held, **45.**
Life policies in favour of, **74.**
Personal earnings of, **73.**
Loan by, to husband's firm not postponed, **45.**
Furniture, if transferred to husband's house, not immixed, **73.**
Ranks for proceeds of corporeal moveables sold by husband, **73.**
Ranks for enhancement of stock by her efforts, **73.**
Entitled to reasonable provision out of her property claimed by husband's trustee, **73.**
Property not subject to diligence of husband's creditors, **77.**
Rights of, where her furniture sold by landlord, **77.**
WITNESSES—
Diligence to cite, **26, 93, 96,** *30.*
WORKMEN'S COMPENSATION—
Claim for, on bankruptcy of employer, **67, 86.**
Preference, **86.**
Does not extend to expenses, **86.**
WORKMEN'S LIEN, **78.**
WORKMEN'S WAGES. *See* WAGES.

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